

EXHIBIT A

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

----- :
: PHILIP R. MCHUGH,
: Plaintiff,
: vs. : CASE NO.
: 1:21-cv-00238
: FIFTH THIRD BANCORP, et
: al.,
: Defendants.

Videotaped
Deposition of: MARSHA CONRAD WILLIAMS
Taken: By the Plaintiff
Pursuant to Notice
Date: February 16, 2023
Time: Commencing at 9:16 a.m.
Place: Fifth Third Center
511 Walnut Street
Cincinnati, Ohio 45202
Before: Wendy L. Raymer, RPR, CRR
and
Bruce L. Sandy, Videographer
Notaries Public-State of Ohio

1 APPEARANCES:

2 On behalf of the Plaintiff:

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4 and

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23 Philip R. McHugh

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25 Brian Thomas, Esq., Fifth Third Bancorp

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I N D E X

MARSHA CONRAD WILLIAMS PAGE

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<p>Page 4</p> <p>1 THE VIDEOGRAPHER: Today is February 16, 2023.</p> <p>2 The time is 9:16 a.m. We're on the record for the</p> <p>3 deposition of Marsha C. Williams for a case pending</p> <p>4 in the United States District Court, Southern</p> <p>5 District of Ohio, Western Division, entitled Philip</p> <p>6 R. McHugh, Plaintiff, vs. Fifth Third Bancorp,</p> <p>7 et al., Defendants, Case No. 1:21-cv-00238. If at</p> <p>8 this time all counsel present would introduce</p> <p>9 themselves for the record then the witness can be</p> <p>10 sworn.</p> <p>11 MR. SABA: Peter Saba for the plaintiff.</p> <p>12 MR. SMITH: Joshua Smith also for the</p> <p>13 plaintiff.</p> <p>14 MR. CIOFFI: Michael Cioffi on behalf</p> <p>15 of all defendants. I also represent</p> <p>16 Ms. Williams personally pursuant to a</p> <p>17 written engagement letter.</p> <p>18 MR. THOMAS: Brian Thomas for Fifth Third</p> <p>19 Bank.</p> <p>20 MS. POOLE: Phenise Poole for Fifth Third</p> <p>21 Bank.</p> <p>22 MARSHA CONRAD WILLIAMS,</p> <p>23 of lawful age, a witness herein, being first duly sworn</p> <p>24 as hereinafter certified, was examined and deposed as</p> <p>25 follows:</p>	<p>Page 6</p> <p>1 any time, let me know. I'll just need you to answer the</p> <p>2 question that's on the table at the time.</p> <p>3 A. I understand.</p> <p>4 Q. Okay. What is your current residence address?</p> <p>5 A. 400 Port Republic Street, Beaufort, South</p> <p>6 Carolina 29902.</p> <p>7 Q. And how long have you lived at that address?</p> <p>8 A. Approximately five years.</p> <p>9 Q. Who lives there with you?</p> <p>10 A. My husband.</p> <p>11 Q. How long have you been married?</p> <p>12 A. 28 years.</p> <p>13 Q. What is your date of birth?</p> <p>14 A. March 28, 1951.</p> <p>15 Q. The other depositions that you have given, why</p> <p>16 did you give depositions in the past?</p> <p>17 A. Two were in connection with a mutual fund</p> <p>18 board, and one was in connection with the oil company</p> <p>19 that I formerly worked for.</p> <p>20 Q. What was the name of that company?</p> <p>21 A. Amoco Oil Company, Amoco Corporation.</p> <p>22 Q. And what was the nature of the litigation that</p> <p>23 required your deposition for Amoco?</p> <p>24 A. I believe it was an employment dispute.</p> <p>25 Q. What was the nature of the claim?</p>
<p>Page 5</p> <p>1 EXAMINATION</p> <p>2 BY MR. SABA:</p> <p>3 Q. Ms. Williams, can you go ahead and state your</p> <p>4 name for the record, please, and spell your last.</p> <p>5 A. Marsha Conrad Williams is my full name, and my</p> <p>6 last name is spelled W-i-l-l-i-a-m-s.</p> <p>7 Q. And have you ever had your deposition taken</p> <p>8 before?</p> <p>9 A. Yes.</p> <p>10 Q. As a reminder, I'm going to be asking you a</p> <p>11 series of questions. If there's anything you don't hear</p> <p>12 or don't understand, please feel free to ask me to</p> <p>13 repeat, rephrase the question.</p> <p>14 For the sake of the court reporter, I do need</p> <p>15 you to answer verbally, notwithstanding the fact that we</p> <p>16 are doing this via video. It is difficult for her to</p> <p>17 take down uh-huhs or uh-uhs or just shakes or nods of</p> <p>18 the head.</p> <p>19 Also, if you could wait for me to finish my</p> <p>20 question before you answer, and I'll try and do the same</p> <p>21 to let you finish your answer before I ask another</p> <p>22 question. That also makes for a clearer record.</p> <p>23 Do you understand those instructions?</p> <p>24 A. I do.</p> <p>25 Q. Additionally, if you need to take a break at</p>	<p>Page 7</p> <p>1 A. The nature of the claim was dismissal for</p> <p>2 discrimination.</p> <p>3 Q. What kind of discrimination?</p> <p>4 A. Racial discrimination.</p> <p>5 Q. When was that deposition?</p> <p>6 A. Oh, approximately 1990. I don't recall</p> <p>7 exactly.</p> <p>8 Q. And what was your role in that case?</p> <p>9 A. I was asked questions about the person's</p> <p>10 performance.</p> <p>11 Q. Did they report to you, the plaintiff?</p> <p>12 A. I don't recall.</p> <p>13 Q. The two times you were deposed with respect to</p> <p>14 the mutual fund board, what did those claims involve?</p> <p>15 A. One was a fee dispute, and I don't recall the</p> <p>16 other -- the topic of the other deposition.</p> <p>17 Q. What's the extent of your education?</p> <p>18 A. I have an undergraduate degree in economics</p> <p>19 from Wellesley College, and a master's degree from the</p> <p>20 University of Chicago Business School.</p> <p>21 Q. Are you currently employed?</p> <p>22 A. I am retired.</p> <p>23 Q. How long have you been retired?</p> <p>24 A. Since January of 2011.</p> <p>25 Q. Where were you last employed?</p>

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<p>1 A. Orbitz Worldwide.</p> <p>2 Q. How many boards do you currently serve on?</p> <p>3 A. I currently serve on four boards. Four</p> <p>4 corporate boards.</p> <p>5 Q. And which are those corporate boards?</p> <p>6 A. Modine Manufacturing Company, the Davis Funds,</p> <p>7 Fifth Third Bancorp, and Crown Holdings.</p> <p>8 Q. How long have you served on the board of</p> <p>9 Modine Manufacturing?</p> <p>10 A. Since 1999.</p> <p>11 Q. And what about the Davis Funds?</p> <p>12 A. Also since 1999.</p> <p>13 Q. And the last one, it sounded like Crown Cork</p> <p>14 and Seal, but I know that's not what they're called</p> <p>15 anymore?</p> <p>16 A. Crown Holdings.</p> <p>17 Q. Okay. And how long have you served on the</p> <p>18 board of Crown Holdings?</p> <p>19 A. Since 2022.</p> <p>20 Q. When did you first meet Greg Carmichael?</p> <p>21 A. I first met Greg Carmichael in December of</p> <p>22 2008 when I was interviewing for the Fifth Third board.</p> <p>23 Q. What was his position with Fifth Third at that</p> <p>24 time?</p> <p>25 A. I believe he was the chief operating officer.</p>	<p>1 asking.</p> <p>2 Q. Certainly. I can narrow down the time frame</p> <p>3 for you. Since January 1 of 2019.</p> <p>4 A. Oh, okay. I believe we met -- I believe we</p> <p>5 met in conjunction with the MB Financial transaction,</p> <p>6 although that may have been before January of '19, I'm</p> <p>7 not clear exactly on date, but other than that,</p> <p>8 generally my meetings were in conjunction with board</p> <p>9 meetings.</p> <p>10 Q. Do you communicate with Mr. Carmichael by</p> <p>11 phone?</p> <p>12 A. Yes.</p> <p>13 MR. CIOFFI: Go ahead.</p> <p>14 BY MR. SABA:</p> <p>15 Q. How frequently do you communicate with</p> <p>16 Mr. Carmichael by phone?</p> <p>17 MR. CIOFFI: Objection. Time frame.</p> <p>18 BY MR. SABA:</p> <p>19 Q. Since January 1 of 2019.</p> <p>20 A. I can't tell you exactly. I would say</p> <p>21 periodically. Usually in conjunction with preparation</p> <p>22 of the agenda or if there were particular topics of --</p> <p>23 relating to the board that were relevant or if I had a</p> <p>24 question. We communicated more often during COVID.</p> <p>25 Q. And is that by both voice calls and text?</p>
Page 9	Page 11
<p>1 Q. How would you describe your relationship with</p> <p>2 Greg Carmichael?</p> <p>3 A. Professional.</p> <p>4 Q. How often do you meet with Greg Carmichael</p> <p>5 one-on-one?</p> <p>6 A. At every board meeting.</p> <p>7 Q. Is it during the board meeting or is there a</p> <p>8 particular time when you just meet with Mr. Carmichael,</p> <p>9 you and Mr. Carmichael?</p> <p>10 A. It's generally after the board meeting.</p> <p>11 Q. And what is the reason for those meetings?</p> <p>12 A. To provide feedback to Greg from the board.</p> <p>13 Q. Are there any notes or minutes kept from those</p> <p>14 meetings?</p> <p>15 A. No.</p> <p>16 Q. How long do those meetings typically last?</p> <p>17 A. Depends on the topic. Anywhere from 15</p> <p>18 minutes to 45 minutes. Generally it's 30 minutes or</p> <p>19 less.</p> <p>20 Q. Other than the meetings that you have with</p> <p>21 Mr. Carmichael following board meetings, do you have any</p> <p>22 other one-on-one meetings with Mr. Carmichael?</p> <p>23 A. Could you be a little more specific about your</p> <p>24 question? I mean, during what time frame are you</p> <p>25 asking? I guess I'm not completely clear on what you're</p>	<p>1 A. Primarily voice calls. There may have been</p> <p>2 texts; I just don't recall.</p> <p>3 Q. How frequently do you communicate with</p> <p>4 Mr. Carmichael by email?</p> <p>5 MR. CIOFFI: Again, same time frame?</p> <p>6 MR. SABA: Yes.</p> <p>7 THE WITNESS: I would say on occasion.</p> <p>8 BY MR. SABA:</p> <p>9 Q. What is your email address?</p> <p>10 A. Marsha Williams@outlook.com.</p> <p>11 Q. And what is your cell phone number?</p> <p>12 MR. CIOFFI: By way of objection, I'm going to</p> <p>13 ask that this be designated as confidential, both</p> <p>14 in terms of her email and her personal cell phone</p> <p>15 number.</p> <p>16 MR. SABA: We have no objection to that.</p> <p>17 That's fine.</p> <p>18 MR. CIOFFI: Go ahead.</p> <p>19 THE WITNESS: My cell phone number?</p> <p>20 MR. SABA: Yes.</p> <p>21 THE WITNESS: 312-485-4885.</p> <p>22 BY MR. SABA:</p> <p>23 Q. Who is your cell phone provider?</p> <p>24 A. Verizon.</p> <p>25 Q. When did you first meet Robert Shaffer?</p>

<p>Page 12</p> <p>1 A. I believe it was in January of '09 at the 2 Fifth Third board meeting. 3 Q. How would you describe your relationship with 4 Mr. Shaffer? 5 A. Professional. 6 Q. Since January of 2019, how often have you met 7 one-on-one with Mr. Shaffer? 8 A. I don't believe I've met with -- one-on-one 9 with Mr. Shaffer at all since 2019. 10 Q. Since January 1 of 2019, how frequently have 11 you communicated with Mr. Shaffer by phone? 12 A. I don't believe at all. 13 Q. That would include text messages as well? 14 A. Correct. 15 Q. Have you communicated with Mr. Shaffer by 16 email since January 1 of 2019? 17 A. I don't recall specifically, but I don't 18 believe so. 19 Q. Since January 1 of 2019, how many times have 20 you spoken with Mr. Shaffer? 21 MR. CIOFFI: Objection. Context. Ever or I 22 mean -- 23 MR. SABA: Anything. 24 THE WITNESS: At every board meeting. At 25 every board dinner.</p>	<p>Page 14</p> <p>1 that committee ended. 2 Q. Are you no longer serving on the risk 3 committee? 4 A. At the moment I am not on the risk committee. 5 Q. And when did you serve on the finance 6 committee? 7 A. We formed the finance committee in 8 approximately -- well, we reconstituted the membership 9 of the finance committee in approximately 2015. I may 10 have served prior to that. I don't recall specifically, 11 but I know certainly starting in 2015 until the present. 12 Q. When did you serve on the audit committee? 13 A. I don't recall the dates. 14 Q. Do you currently serve on the audit committee? 15 A. No, I do not. 16 Q. When did you serve on the nominating and 17 governance committee? 18 A. I don't recall when I started on that 19 committee, but I am currently on that committee and have 20 been for the last few years. 21 Q. Have you ever served on the human capital and 22 compensation committee? 23 A. Yes. That is the other committee I have 24 served on, and I am currently on that committee. 25 Q. And how long have you served on the human</p>
<p>Page 13</p> <p>1 BY MR. SABA: 2 Q. Any other occasions? 3 A. Committee meetings outside of the actual board 4 meetings. Committee meetings in conjunction with the 5 board. 6 Q. Any other occasions? 7 A. Not that I recall. 8 Q. Can you summarize for me the history of your 9 relationship with Fifth Third Bank? 10 A. I was invited to interview. I was visited in 11 Chicago by Kevin Kabat and invited to interview for the 12 board in the early winter of 2008. I went to the 13 December board meeting in 2008 and was asked to join the 14 board at that point. 15 Q. When did you become the lead independent 16 director? 17 A. 2014. 18 Q. On which committees have you served? 19 A. I've served on the risk committee. I've 20 served on the finance committee. I've served on the 21 audit committee. I've served on the nominating and 22 governance committee. 23 Q. When did you serve on the risk committee? 24 A. Starting in 2009, I served on the risk 25 committee. I don't recall when my -- when my service on</p>	<p>Page 15</p> <p>1 capital and compensation committee? 2 A. I don't recall when I started, but I am still 3 on that committee. 4 Q. What are your duties as the lead independent 5 director? 6 A. Well, I am no longer the lead independent 7 director. 8 Q. When did you stop being the lead independent 9 director? 10 A. In April of 2022. 11 Q. Who currently serves as the lead independent 12 director? 13 A. Nick Akins. 14 Q. Did you continually serve as the lead 15 independent director from 2014 up until April 2022? 16 A. From April of 2014 until April of 2015, I was 17 the lead director. Then I was the chairman of the board 18 from April of 2015 until December of 2018. And then I 19 became lead director December of 2018 until April of 20 2022. 21 Q. Did Greg Carmichael replace you as chairman of 22 the board in December of 2018? 23 A. Yes. 24 Q. Between December of 2018 and April of 2022, 25 what were your duties as lead director -- lead</p>

<p>1 independent director? Excuse me.</p> <p>2 A. My duties were to review and approve the</p> <p>3 agenda for each board meeting, to -- to conduct the</p> <p>4 executive -- the executive sessions of the board</p> <p>5 meeting, to coordinate the views of -- to coordinate and</p> <p>6 communicate the views of the board to Greg and the other</p> <p>7 members of senior management.</p> <p>8 Q. Explain to me the process by which the agenda</p> <p>9 for board meetings would be reviewed and approved?</p> <p>10 A. I would generally get it in advance. I would</p> <p>11 look it over. I would make comments, if there were any</p> <p>12 necessary, and I would send comments back.</p> <p>13 Q. Who would provide the agenda to you for your</p> <p>14 review?</p> <p>15 A. Usually the office of the secretary, the</p> <p>16 corporate secretary.</p> <p>17 Q. Who would initially set the agenda for your</p> <p>18 review?</p> <p>19 A. Oftentimes it was prepared by the staff, but</p> <p>20 if, for example, at the prior meeting, there was a</p> <p>21 specific topic that we needed to be covered, I would ask</p> <p>22 that that be added to the agenda. And so it was a</p> <p>23 combination of the routine matters that we needed to</p> <p>24 cover, the matters of importance that needed to be</p> <p>25 addressed, and any matters that the board specifically</p>	<p>Page 16</p> <p>1 Q. So when you answer that there were five board</p> <p>2 meetings in 2019, to the best of your recollection as</p> <p>3 you sit here, that would refer to board meetings for</p> <p>4 both Fifth Third Bancorp and Fifth Third Bank National</p> <p>5 Association; is that correct?</p> <p>6 A. Correct.</p> <p>7 Q. How many board meetings were there in 2020?</p> <p>8 A. I do not recall. There were a number of board</p> <p>9 meetings telephonically in connection with COVID. I do</p> <p>10 recall that. I haven't counted up the total number of</p> <p>11 board meetings.</p> <p>12 Q. How many members of the board are there?</p> <p>13 A. Right now, there are either 15 or 16.</p> <p>14 Q. And what is the board's role with respect to</p> <p>15 executive succession at Fifth Third?</p> <p>16 MR. CIOFFI: Objection. Can you be more</p> <p>17 specific?</p> <p>18 BY MR. SABA:</p> <p>19 Q. Did you understand my question?</p> <p>20 A. Specificity would be helpful.</p> <p>21 Q. Okay. Beginning in January of 2019, what was</p> <p>22 the board's role with respect to executive succession of</p> <p>23 employees at Fifth Third Bank?</p> <p>24 A. Our role was to review and evaluate succession</p> <p>25 candidates and discuss among ourselves our views of the</p>
<p>1 asked be on the agenda.</p> <p>2 Q. Separate and apart from your role as lead</p> <p>3 independent director, what were your duties as a board</p> <p>4 member?</p> <p>5 A. My duties as a board member were to read and</p> <p>6 come prepared to all board meetings. To ask questions</p> <p>7 of management. To exercise my business judgment. To</p> <p>8 understand the business of the board. To evaluate</p> <p>9 senior management. To evaluate the performance of the</p> <p>10 company. And to generally act in the best interest of</p> <p>11 the shareholders.</p> <p>12 Q. How often did Fifth Third's board meet in</p> <p>13 2019?</p> <p>14 A. I don't recall exactly, but generally the</p> <p>15 board meetings -- generally we had five board meetings a</p> <p>16 year. Years when we had particularly active items, like</p> <p>17 during COVID, we would have more meetings, but generally</p> <p>18 the schedule was five meetings a year.</p> <p>19 Q. And you serve as a member of the board of both</p> <p>20 Fifth Third Bancorp and Fifth Third Bank National</p> <p>21 Association; is that correct?</p> <p>22 A. That's correct.</p> <p>23 Q. Do you distinguish between the board meetings</p> <p>24 for each of those boards?</p> <p>25 A. Generally, no.</p>	<p>Page 17</p> <p>1 candidates.</p> <p>2 Q. Anything else?</p> <p>3 A. We met and talked about them and generally</p> <p>4 talked about the candidates at every -- at every board</p> <p>5 meeting. Talked about and to the candidates at every</p> <p>6 board meeting. So really an evaluation role.</p> <p>7 Q. What is the board's role with respect to</p> <p>8 executive succession of the president and CEO at Fifth</p> <p>9 Third Bank?</p> <p>10 A. It would be the same role -- so could you</p> <p>11 clarify your question?</p> <p>12 Q. Certainly. What I'm asking now is</p> <p>13 specifically with respect to the president and CEO at</p> <p>14 Fifth Third Bank, what is the board's role?</p> <p>15 A. The board's role is to evaluate candidates, to</p> <p>16 look at the entire Enterprise team and determine if</p> <p>17 anyone on the Enterprise team or any one of the top five</p> <p>18 people listed in the proxy would be appropriate</p> <p>19 successors when the time came. To think through the</p> <p>20 types of skills that we would need in a new president</p> <p>21 and CEO at the time that we would need a new president</p> <p>22 and CEO. And to generally speak to the people that</p> <p>23 would be possibly under consideration for that role, and</p> <p>24 to evaluate their performance and their capabilities and</p> <p>25 their experience and their education to make sure that</p>
<p>Page 18</p>	<p>Page 19</p>

<p>1 whoever we ultimately chose to be the next president and 2 CEO was qualified. 3 Q. With respect to executive succession of the 4 president and/or CEO of Fifth Third, did your role 5 differ with respect to being a lead director, lead 6 independent director, from those other directors on the 7 board? 8 A. I would say all of the independent -- all of 9 the independent directors on the board had a voice and a 10 role. I would say it was a similar voice and role. If 11 there were any dissenting voices who perhaps didn't feel 12 comfortable speaking out, they could easily call me and 13 communicate their views to me and I would disseminate 14 those views. 15 Q. Who would you disseminate those views to? 16 A. Other board members. 17 Q. Other than being a conduit for disseminating 18 views of other board members, did your role as lead 19 independent director give you any different 20 responsibilities or obligations than other board members 21 had with respect to executive succession of the 22 president or CEO at Fifth Third? 23 A. The role of the entire board is to plan for 24 succession and to select the next leaders of the 25 organization. That's one of our primary goals. It's</p>	<p>Page 20</p> <p>1 BY MR. SABA: 2 Q. Is that correct? 3 A. Yes. 4 Q. And referring to -- and if you look at the 5 bottom right-hand corner is a page reference you'll see 6 the first page begins with a 1 of 107 and 7 correspondingly after that it marks the page number as a 8 page number of 107. Do you see what I'm referring to in 9 the bottom right-hand corner? 10 A. I do. 11 Q. Referring to pages 4 and 5, can you identify 12 for me what that is? 13 A. That is a letter from the chairman and lead 14 independent director. 15 Q. And do you recall whether or not the Fifth 16 Third Bank Corps proxy statements prior to 2020 included 17 a joint letter from the chairman and lead independent 18 director? 19 A. I do not recall. 20 Q. Do you ever recall preparing or being involved 21 in the sending of a joint letter from the chairman and 22 lead independent director prior to 2020? 23 A. I don't recall. I do recall reviewing some 24 letters. I don't recall the years. 25 Q. Do you recall this particular letter that we</p> <p>Page 22</p>
<p>1 listed very clearly in the regulatory materials that we 2 received from the OCC when we became an OCC bank. It is 3 the full board's responsibility, not just the role of 4 any one director. 5 (Plaintiff's Exhibit 1 is marked for 6 identification.) 7 BY MR. SABA: 8 Q. Ms. Williams, you've been handed what has been 9 marked as Exhibit Number 1. Can you identify that for 10 me, please? 11 A. Identify in what way? 12 Q. Can you -- are you able to identify what this 13 document is? 14 A. Yes. It's a Schedule 14A. 15 Q. Okay. And this has a series of pages attached 16 to it; is that correct? 17 A. Correct. 18 Q. In fact, in total there are 107 pages attached 19 to this Schedule 14A; is that right? 20 A. Yes. 21 Q. And the Schedule 14A includes a copy of the 22 Fifth Third Bancorp 2020 proxy statement; is that 23 correct? 24 MR. CIOFFI: Objection. The document speaks 25 for itself.</p> <p>Page 21</p>	<p>1 see as part of Exhibit 1? 2 A. Yes. 3 Q. Can you explain to me the process by which 4 this letter was created? 5 A. It was drafted by someone within the company. 6 It was sent to me for review and comment. And then it 7 was finalized. 8 Q. Do you know who in the company drafts the 9 letter? 10 A. I do not. 11 Q. Did you have any changes to the letter? 12 A. I don't recall. 13 Q. Did you have any notes that would reflect any 14 changes you had to this letter? 15 A. I doubt it. 16 Q. When you reviewed the letter, did you try and 17 review it for accuracy? 18 A. I would have always reviewed it for accuracy. 19 Q. So you feel the statements that are made in 20 here are accurate and correct; is that right? 21 A. I believe they are accurate. 22 Q. Would you know if Mr. Carmichael had any 23 changes to the draft of the letter? 24 A. I do not know. 25 Q. As part of the process of preparing this joint</p> <p>Page 23</p>

<p>1 letter, you were not given any changes made by 2 Mr. Carmichael? 3 A. I recall reviewing a draft. I don't recall 4 what -- whether he had made -- I wouldn't have been -- I 5 wasn't part of that process, so I don't know. 6 Q. Do you recall when the timing was that you did 7 review this draft of the letter? 8 A. No, I do not. 9 Q. Obviously it would be sometime prior to the 10 proxy statement being issued in 2020, correct? 11 A. Correct. Correct. 12 Q. Do you recall if that was weeks before, months 13 before? 14 A. I don't recall. 15 Q. How was that draft provided to you for review? 16 Was that via email or was that handed to you in person? 17 A. I believe it was email. 18 Q. Would you still have that email? 19 A. I don't -- I don't know. I don't believe so. 20 (Plaintiff's Exhibit 2 is marked for 21 identification.) 22 BY MR. SABA: 23 Q. Ms. Williams, you've been handed what's been 24 marked as Exhibit Number 2. Are you able to identify 25 that for me, please?</p>	Page 24	<p>1 basis for their compensation changes, any compensation 2 changes, if any, for the following year, but the primary 3 succession discussions are handled by the entire board. 4 The compensation committee also develops a framework for 5 a new president or CEO, a framework which we first 6 developed in 2015 as we were evaluating Greg Carmichael 7 for the CEO position. 8 Q. What do you mean by a "framework"? What is a 9 framework? 10 A. A set of guidelines that are sort of 11 principles and sort of a definition of what we're 12 seeking in a new -- in the role -- the kind of qualities 13 we wanted for anyone who was in the role of CEO -- 14 president or CEO. 15 Q. And you said the human capital and 16 compensation committee first did that in 2015; is that 17 correct? 18 A. I don't recall if the committee did that in 19 2015. We hired an outside firm to help us develop that 20 in 2015. I don't recall who -- I believe it was the 21 compensation committee that directed that. 22 Q. And the guidelines and principles that formed 23 that framework for what Fifth Third is seeking for the 24 next president and CEO, had that changed at all from 25 2015 to 2020?</p>	Page 26
<p>1 A. Yes. It's again a Schedule 14A. 2 Q. And do you recognize this as the Schedule 14A 3 for 2019? 4 A. Yes. 5 Q. And Exhibit Number 2 -- referring again to the 6 page marks on the bottom right-hand corner -- would be 7 147 pages long; is that correct? 8 A. That's correct. 9 Q. And referring you to page 4 of 147, that is 10 the Fifth Third Bancorp 2019 proxy statement; is that 11 correct? 12 A. That's correct. 13 Q. And if you could look through that, do you 14 agree with me that there was no joint letter sent from 15 yourself and Mr. Carmichael with the 2019 proxy 16 statement; is that correct? 17 A. That appears to be correct. 18 Q. Whose decision was it that there would be a 19 joint letter sent from yourself and Mr. Carmichael along 20 with the 2020 proxy statement? 21 A. I don't recall. 22 Q. What is the role of the human capital and 23 compensation committee with respect to executive 24 succession at Fifth Third Bank? 25 A. It is to evaluate the candidates on an annual</p>	Page 25	<p>1 A. There were minor changes, but in general, the 2 framework that we established in 2015 remained the same. 3 But I believe there were some minor updates and small 4 changes. I don't recall what they were, but fairly 5 minor, as I believe. 6 Q. And is that framework set forth in writing? 7 A. Yes. 8 Q. And what is that framework called, the 9 document that contains that framework? 10 A. I've forgotten the exact title, but it was 11 prepared by RHR International. Something like the 12 winning formula or something close to that. 13 Q. And how frequently would that winning formula 14 be updated? 15 A. As needed. 16 Q. Between 2015 and September of 2020, how many 17 times was the winning formula updated? 18 A. Once. 19 Q. And when was that one time? 20 A. I don't recall precisely, but I believe as the 21 board was thinking through Greg's potential succession, 22 the compensation committee decided it would be an 23 appropriate time to refresh the framework. I don't 24 recall the exact dates. 25 Q. Prior to January 1st of 2020, what was your</p>	Page 27

<p>1 relationship with Phil McHugh?</p> <p>2 A. I saw him at board meetings.</p> <p>3 Q. Prior to January 1, 2020, had you ever seen</p> <p>4 Phil McHugh outside of the board meetings?</p> <p>5 A. At board dinners.</p> <p>6 Q. Other than board dinners and board meetings,</p> <p>7 did you ever see Phil McHugh prior to January 1, 2020?</p> <p>8 A. Not to my knowledge.</p> <p>9 Q. With respect to those board meetings, how much</p> <p>10 time would you spend conversing with Phil McHugh?</p> <p>11 A. Could you -- could you clarify that question?</p> <p>12 Q. Certainly. Prior to January 1, 2020, you</p> <p>13 indicated that the only time you saw Phil McHugh was at</p> <p>14 either board meetings or board dinners.</p> <p>15 A. Correct.</p> <p>16 Q. And I'm asking specifically with respect to</p> <p>17 the board meetings at which you would have seen Phil</p> <p>18 McHugh, how much time would you converse with Phil</p> <p>19 McHugh at these respective board meetings?</p> <p>20 MR. CIOFFI: I'm going to object -- converse?</p> <p>21 What do you mean by that?</p> <p>22 BY MR. SABA:</p> <p>23 Q. Do you understand what the word "converse"</p> <p>24 means, to have a conversation with somebody?</p> <p>25 A. I do understand what the word "converse"</p>	<p>Page 28</p> <p>1 been at board dinners. So various times he would</p> <p>2 have been at board lunches. So various times to</p> <p>3 converse.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Other than asking Phil specific questions</p> <p>6 about presentations at a board meeting, would you have</p> <p>7 had any other conversations with him at board meetings?</p> <p>8 A. At lunch, we could have had conversations. At</p> <p>9 dinner, we could have had conversations. I don't</p> <p>10 recall the extent and topic of those conversations.</p> <p>11 Q. Do you recall any of those conversations</p> <p>12 specifically?</p> <p>13 A. I recall speaking to him. I don't recall the</p> <p>14 nature of the conversations.</p> <p>15 Q. Prior to January 1, 2020, did you ever observe</p> <p>16 Phil McHugh in the workplace at Fifth Third?</p> <p>17 A. I observed him at board meetings.</p> <p>18 Q. Outside of board meetings or a board dinner or</p> <p>19 a board lunch?</p> <p>20 A. No.</p> <p>21 Q. Prior to January 1, 2020, did you ever meet</p> <p>22 with or interview any of Phil McHugh's direct reports?</p> <p>23 A. I don't recall. Some of his -- so, for</p> <p>24 example, some of his direct reports may have presented</p> <p>25 to the board, in which case I would have. I don't</p>
<p>1 means. I'm not clear on the context, so...</p> <p>2 MR. CIOFFI: Can you clarify it? So, for</p> <p>3 example, you could ask what happened at the board</p> <p>4 meetings when they interacted, something that just</p> <p>5 allows her to answer the question without</p> <p>6 understanding your word "converse."</p> <p>7 BY MR. SABA:</p> <p>8 Q. Going back to the board meetings at which you</p> <p>9 would have seen Phil McHugh prior to January 1, 2020,</p> <p>10 did you have any conversations with Phil McHugh?</p> <p>11 A. I would ask questions during the board</p> <p>12 meetings and he would answer, if that's included in a</p> <p>13 conversation.</p> <p>14 Q. And how frequently would that happen at board</p> <p>15 meetings that you would ask a question of Mr. McHugh and</p> <p>16 he would answer?</p> <p>17 MR. CIOFFI: You're now including in your</p> <p>18 question all board meetings?</p> <p>19 MR. SABA: Prior to January 1, 2020.</p> <p>20 THE WITNESS: I don't recall exactly, but</p> <p>21 prior to January 1, 2020, I had, at that point,</p> <p>22 been on the board 11 years. We had approximately</p> <p>23 five board meetings a year. Phil would have</p> <p>24 presented at some of those board meetings, probably</p> <p>25 all of them, I don't recall exactly. He would have</p>	<p>Page 29</p> <p>1 recall the specifics.</p> <p>2 Q. Did you ever discuss Phil McHugh with any of</p> <p>3 Phil McHugh's direct reports?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Did you ever discuss Phil McHugh with Greg</p> <p>6 Carmichael?</p> <p>7 A. In conjunction with performance reviews during</p> <p>8 the HCC committee and -- yes. And during the executive</p> <p>9 talent review that we held every December, yes, we would</p> <p>10 have had conversations.</p> <p>11 Q. Do you recall the content of any of those</p> <p>12 conversations?</p> <p>13 A. Well, the content of the performance, the</p> <p>14 salary discussions at the June compensation committee</p> <p>15 meetings would have been to understand his level of</p> <p>16 compensation, his performance, and the rationale for</p> <p>17 whatever compensation changes were occurring.</p> <p>18 Q. And what about the December meetings?</p> <p>19 A. The December meetings, we talked about a</p> <p>20 number of executives and we talked about their</p> <p>21 backgrounds, their current responsibilities, some of</p> <p>22 their prior responsibilities, their strengths and</p> <p>23 weaknesses, and their suitability for promotions.</p> <p>24 Q. And do you recall any specific conversations</p> <p>25 with Phil McHugh with respect to those topics?</p>
<p>Page 30</p>	<p>Page 31</p>

<p>Page 32</p> <p>1 A. We would have discussed him, but I don't 2 recall the specifics of any of the conversations. 3 Q. Did you ever discuss with Greg Carmichael the 4 topic of Phil McHugh succeeding him as the president 5 and/or CEO of Fifth Third? 6 A. No. I never had that conversation because I 7 don't believe Phil would have been a suitable candidate 8 for either position. 9 Q. And why is that? 10 A. Well, because I don't think that he had the 11 experience. I don't think that he had the educational 12 background. I don't think that he had the knowledge. I 13 don't think that he had the skills. I don't think that 14 he had the digital banking background that we were 15 seeking. And I don't think he had the communication 16 skills. 17 I don't think, for example, that he could have 18 effectively spoken to Wall Street, and I don't think he 19 would have been an effective communicator with the 20 press, both of which are critical in a CEO. 21 Q. Going through your list, you said Phil did not 22 have the experience. What experience was Phil McHugh 23 lacking? 24 A. He was lacking M&A experience. He was lacking 25 capital markets experience. He was lacking experience</p>	<p>Page 34</p> <p>1 I went to Chicago with Tim Spence and Tayfun 2 Tazun and Greg Carmichael and we met with the chair and 3 the CEO of Fifth Third Bank, and they told us 4 specifically that the reason they were interested in 5 selling MB Financial to Fifth Third Bank was because Tim 6 had introduced us to them. Tim had done -- Tim knew the 7 MB Financial senior team and they believed that Tim's 8 presence was an important reason why they would be 9 interested in talking with us. 10 Q. When did that trip and conversation occur? 11 A. I don't recall exactly, but it would have been 12 just as we were starting due diligence on the MB 13 Financial transaction. 14 Q. What year would that have been? 15 A. It was either 2018 or '19, I don't recall 16 exactly. The meeting was held in Chicago, outside of 17 Chicago. 18 Q. What is Tim Spence's capital markets 19 experience? 20 A. Again, as various of his consulting clients 21 were thinking about different structures and capital 22 raises that they needed to do, my understanding is that 23 Tim met with a number of the investment banks to talk 24 through different ways to raise money, and he had 25 contacts with a number of the major investment banks in</p>
<p>Page 33</p> <p>1 in interacting with other bank CEOs. He was lacking 2 sort of -- I would call it global experience. He had -- 3 you know, he had spent his entire career at Fifth Third, 4 so he had no experience with other organizations and how 5 other organizations are organized and run. He had 6 limited geographic experience, having lived and gone to 7 school in Cincinnati and worked in Louisville. So it's 8 very regional experience, basically limited to two 9 states. And when you think about the Fifth Third 10 footprint, it covers a wide swath of the country. So I 11 was concerned about his -- I don't think he had the 12 geographic scope of what a CEO should have. 13 Q. What M&A experience did Mr. Spence have? 14 A. He had significant M&A experience. He was a 15 consultant with Oliver Wyman for over nine years. He 16 worked on multiple bank M&A transactions, both 17 domestically and internationally. He did due diligence 18 for a number of bank mergers and acquisitions. And when 19 we were negotiating the MB Financial transaction, he was 20 the gentleman who basically opened up the doors for 21 Fifth Third to ultimately acquire MB. He had contacts 22 at MB. MB had decided that they needed to sell 23 themselves but didn't necessarily want to go through an 24 auction, so they were discussing a potential sale with 25 two organizations.</p>	<p>Page 35</p> <p>1 New York. And also I believe with investment analysts. 2 You know, in his role as independent consultant, he had 3 the ability to develop those contacts over quite a 4 number of years. 5 Q. And who gave you that understanding? 6 A. Well, it was clear when we hired Tim that that 7 was an important element of his background, in addition 8 to the fact that he had a deep understanding of Fintech, 9 and we hired Tim in 2015 because we needed some -- we 10 needed a head of strategy. We did not have one. Tim 11 had drafted our 2011 strategic plan and presented it to 12 the board. We did a strategic plan every two years at 13 that point and he also did the strategic plan in 2013. 14 And it became apparent that we didn't have any 15 of the skill sets inside the bank to really draft a 16 sophisticated strategic plan, so as the Fintechs were 17 gaining in importance and starting to eat into -- excuse 18 me -- commercial banking's traditional purview, it was 19 clear that we needed somebody who understood Fintechs, 20 who had worked in -- in the digital space, and who could 21 help us lead our strategy. So when we hired Tim, we 22 knew quite a bit about his background. And he was very 23 well-known to the board. 24 Q. With respect to interacting with other bank 25 CEOs, what experience did Mr. Spence have with</p>

<p>Page 36</p> <p>1 interacting with other bank CEOs?</p> <p>2 A. Well, he would work on strategic issues with a</p> <p>3 number of the CEOs. I know, for example, that he</p> <p>4 interacted with Mitch Feiger, who was the CEO of MB, and</p> <p>5 he had as his clients both a number of domestic and</p> <p>6 international banks. So he also had international</p> <p>7 banking experience.</p> <p>8 Oftentimes when you're working on a strategic</p> <p>9 project like that, when a bank hires a firm like Oliver</p> <p>10 Wyman -- which was the leading bank consulting firm in</p> <p>11 the country -- the CEO is involved in that conversation</p> <p>12 because you're talking about strategic issues.</p> <p>13 Q. So what other CEOs are you specifically aware</p> <p>14 of that Tim Spence interacted with?</p> <p>15 A. I believe the CEO of Bank of America.</p> <p>16 Q. And what do you base that upon?</p> <p>17 A. Different conversations I've had with Tim over</p> <p>18 the years.</p> <p>19 Q. When did you have those conversations?</p> <p>20 A. Over -- I don't recall precisely, but over a</p> <p>21 period of time. He had an extensive consulting</p> <p>22 background that really covered a variety of</p> <p>23 institutions -- again, both domestically and</p> <p>24 internationally -- large institutions, medium-sized</p> <p>25 institutions. I know he, for example, worked with Kevin</p>	<p>Page 38</p> <p>1 Q. Who else would have been involved in those</p> <p>2 meetings?</p> <p>3 A. Greg Carmichael and Tayfun most probably.</p> <p>4 Q. You indicated before that you went to Chicago</p> <p>5 with Tim Spence; is that correct?</p> <p>6 A. I met them in Chicago, that's correct.</p> <p>7 Outside of Chicago.</p> <p>8 Q. Other than meeting Tim Spence and -- Greg</p> <p>9 Carmichael was the other person you met there; is that</p> <p>10 correct?</p> <p>11 A. And Tayfun Tazun.</p> <p>12 Q. Other than that meeting with Tim Spence, how</p> <p>13 many other meetings did you have with Tim Spence outside</p> <p>14 the board meetings, board dinners, board lunches,</p> <p>15 committee meetings, and the two to three MB occasions?</p> <p>16 How many occasions had you met?</p> <p>17 A. No other occasions that I recall.</p> <p>18 Q. Did you ever communicate directly with Tim</p> <p>19 Spence by phone or by text?</p> <p>20 A. I don't believe so.</p> <p>21 Q. Did you ever communicate directly with Tim</p> <p>22 Spence by email?</p> <p>23 A. He sent me an email after one board meeting</p> <p>24 because I had asked him -- step back a little bit.</p> <p>25 One of the things that always impressed me</p>
<p>Page 37</p> <p>1 Kabat, the former CEO of Fifth Third. I believe he also</p> <p>2 may have worked with the Huntington Bank CEO. He had</p> <p>3 quite the good Rolodex and he brought that Rolodex and</p> <p>4 those contacts to Fifth Third.</p> <p>5 Q. When did you first meet Tim Spence?</p> <p>6 A. I believe it was either -- I believe it was in</p> <p>7 2010 presented to the board, but the first time I recall</p> <p>8 clearly was 2011 when he presented the strategic plan to</p> <p>9 the board. He drafted the strategic plan. We didn't</p> <p>10 have the capability in-house to do that.</p> <p>11 Q. Prior to January 1, 2020, how would you</p> <p>12 describe your relationship with Tim Spence?</p> <p>13 A. Professional.</p> <p>14 Q. How often would you meet with Tim Spence?</p> <p>15 A. I would meet with him at the board meetings.</p> <p>16 I would meet with him at the board dinners. I would</p> <p>17 meet with him at the various -- if he was presenting to</p> <p>18 the committee at the committee meetings. We also met in</p> <p>19 conjunction with some M&A transactions that we were</p> <p>20 working on, for example, like MB. There were other</p> <p>21 transactions like that that Tim was involved in that I</p> <p>22 would have met with him on maybe two or three occasions.</p> <p>23 Q. When were those?</p> <p>24 A. I don't recall the years exactly, but probably</p> <p>25 2017, '18.</p>	<p>Page 39</p> <p>1 about Tim was his ability to speak with some depth of</p> <p>2 knowledge on a wide variety of topics. And I asked him</p> <p>3 in particular about an article that he had cited, and I</p> <p>4 asked him what publication that article came from or</p> <p>5 what was the name of the periodical or website he was</p> <p>6 reading, and he sent me the name of that. I do recall</p> <p>7 that.</p> <p>8 Q. When was that?</p> <p>9 A. I don't recall when.</p> <p>10 Q. What global experience did Tim Spence have?</p> <p>11 A. Well, he was quite widely traveled, even as a</p> <p>12 child. His mother was an international flight</p> <p>13 attendant, so he had exposure to the world, you know, an</p> <p>14 opportunity that many of us didn't have as children to</p> <p>15 see the various parts of the world which, you know,</p> <p>16 increased his understanding of the world at a very young</p> <p>17 age. And then when he was at Oliver Wyman, he consulted</p> <p>18 with some international banks and some Canadian banks.</p> <p>19 Q. Going back to Mr. Spence's travel, where</p> <p>20 specifically did he go?</p> <p>21 A. I don't know specifically.</p> <p>22 Q. And do you know what ages we're talking about?</p> <p>23 A. I do not. But when he was at Oliver Wyman, he</p> <p>24 would have been, you know, in his 30s and presumably</p> <p>25 20s.</p>

<p>Page 40</p> <p>1 Q. And where did he go for Oliver Wyman?</p> <p>2 A. I don't know specifically, but I do believe he</p> <p>3 went at least some place in Europe and I believe</p> <p>4 Australia and perhaps more. I don't know the full list.</p> <p>5 Q. How many times did he go there?</p> <p>6 A. I do not know.</p> <p>7 Q. Do you know how many places he went to in</p> <p>8 Europe?</p> <p>9 A. I do not know.</p> <p>10 Q. Do you know how many places he went to in</p> <p>11 Australia?</p> <p>12 A. No.</p> <p>13 Q. Do we know of any other continents or</p> <p>14 countries that he went to?</p> <p>15 A. I do not know.</p> <p>16 Q. Do you have any idea how many countries he</p> <p>17 would have gone to with his mother, the flight</p> <p>18 attendant?</p> <p>19 A. I do not know.</p> <p>20 Q. Other than his mother, the flight attendant,</p> <p>21 and the potential trip to Europe and Australia with</p> <p>22 Oliver Wyman, do you have any other examples of</p> <p>23 Mr. Spence's global experience?</p> <p>24 MR. CIOFFI: Objection to the form of the</p> <p>25 question. Mischaracterizes her testimony. She</p>	<p>Page 42</p> <p>1 Q. Do you know if he has any flight attendants in</p> <p>2 his family?</p> <p>3 A. I do not.</p> <p>4 Q. Do you know which countries he's traveled to</p> <p>5 as a child or otherwise?</p> <p>6 A. I do not.</p> <p>7 Q. You mentioned that Mr. McHugh was lacking in</p> <p>8 geographic experience. What is Mr. Spence's geographic</p> <p>9 experience?</p> <p>10 A. Well, he was raised in the Pacific Northwest.</p> <p>11 He went to college in -- excuse me -- in New York state.</p> <p>12 So as an 18-year-old, he would have had exposure to a</p> <p>13 completely different part of the country. And I had a</p> <p>14 similar experience as an 18-year-old and I can tell you</p> <p>15 I learned a significant amount by simply living and</p> <p>16 going to school in a different region; that was</p> <p>17 enormously helpful.</p> <p>18 He then also spent a little bit of time in</p> <p>19 Silicon Valley. He spent time in Minnesota when he was</p> <p>20 with Oliver Wyman. And he traveled quite extensively,</p> <p>21 as consultants do. And so he's worked -- lived and</p> <p>22 worked in many, you know, four or five or six parts of</p> <p>23 the country, and I find value in that.</p> <p>24 Q. And where did you obtain that information</p> <p>25 from?</p>
<p>Page 41</p> <p>1 didn't say there was a trip.</p> <p>2 BY MR. SABA:</p> <p>3 Q. Do you know how many trips there were?</p> <p>4 A. I do not know.</p> <p>5 Q. Do you know -- are you certain there were</p> <p>6 trips?</p> <p>7 A. Yes.</p> <p>8 Q. What is that based upon?</p> <p>9 A. Conversations I've had with Tim Spence over</p> <p>10 the years.</p> <p>11 Q. When did you have those conversations?</p> <p>12 A. Any number of times.</p> <p>13 Q. And where would those conversations have taken</p> <p>14 place?</p> <p>15 A. Board meetings, after board meetings. Board</p> <p>16 lunches, board dinners.</p> <p>17 Q. Do you recall specifically what was said?</p> <p>18 A. Just a little bit about his childhood and the</p> <p>19 fact that he -- his mother would take him on</p> <p>20 international trips and that when he worked for Oliver</p> <p>21 Wyman, he did consult with foreign banks, including</p> <p>22 banks in Canada.</p> <p>23 Q. As you sit here today, do you know if Phil</p> <p>24 McHugh's mother was a flight attendant?</p> <p>25 A. I do not.</p>	<p>Page 43</p> <p>1 A. From Tim Spence.</p> <p>2 Q. You indicated that Mr. McHugh's education made</p> <p>3 him not suitable to be a president or CEO at Fifth</p> <p>4 Third. What --</p> <p>5 A. I don't believe I said that.</p> <p>6 Q. I think you said he did not have the</p> <p>7 experience, education, knowledge, skills, digital</p> <p>8 banking background, communication skills.</p> <p>9 So just to be clear, you are not saying that</p> <p>10 Mr. McHugh's education would make him not suitable to be</p> <p>11 a president or CEO of Fifth Third Bank?</p> <p>12 MR. CIOFFI: Objection. The record will speak</p> <p>13 for itself. She testified as she testified. I</p> <p>14 think your correction of your own question where</p> <p>15 she articulated a lot of different distinctions and</p> <p>16 differentiations between Tim Spence and Phil McHugh</p> <p>17 is what she answered, but -- we can read her answer</p> <p>18 back, but it was a long list of things, not just</p> <p>19 one.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Ms. Williams, are you saying that Mr. McHugh's</p> <p>22 education was not something that made him not suitable</p> <p>23 to be a president or CEO of Fifth Third Bank?</p> <p>24 A. It was a double negative.</p> <p>25 Q. It's a double negative. I'm sorry.</p>

<p>1 A. I always struggle with those. Could you 2 clarify, please? 3 MR. CIOFFI: Rephrase it. 4 BY MR. SABA: 5 Q. That Mr. McHugh's education would not be 6 included by you as a factor that would prevent him from 7 become suitable for being a president and CEO of Fifth 8 Third Bank? 9 MR. CIOFFI: Objection. By way -- for 10 clarification. When you say "education," are you 11 just talking about college or high school or are 12 you talking about education, what one learns as a 13 consultant in the industry? Clarify your question, 14 please. 15 BY MR. SABA: 16 Q. Go ahead, Ms. Williams. 17 A. I'm still confused. 18 Q. Okay. 19 A. So what I meant to say is I believe that Tim 20 Spence's educational background was stronger than Phil 21 McHugh's based on where he went to school, the fact that 22 he had a liberal arts degree. I'm a believer in a 23 liberal arts degree because I think it teaches one how 24 to think critically and broadly. And that he went to a 25 very prestigious college that's very difficult to get</p>	Page 44	<p>1 not suitable for him to be president and CEO; is that 2 correct? 3 A. I -- I'd like to clarify that. 4 Q. Sure. 5 A. So I don't believe his communication skills in 6 general were sufficient to be the CEO, and that was 7 based on the way he answered questions during board 8 meetings. I always felt that his answers were guarded 9 and carefully worded to tell the board what the board 10 wanted to hear. And he tended to read his board 11 presentations rather than having a conversation is 12 feedback I got from a number of board members, please, 13 please, tell the management, and they would list 14 specific people, not to read their board presentations 15 to us because we want to have a conversation. So that's 16 the communication. 17 The other item I was trying to indicate is I 18 don't think, because of his style of communication, I 19 don't think he would be effective with the press. And 20 also he did not have the contacts with Wall Street that 21 Tim had. 22 Q. What contacts did Tim Spence have with Wall 23 Street? 24 A. Well, as he was working with his bank clients, 25 a number of whom were major banks, he would often</p>
<p>1 into. 2 So as -- if you compare the two, I was trying 3 to compare the two, and I believe Tim Spence's 4 educational experiences were stronger than someone with 5 a -- stronger than Phil's. 6 Q. Where did Mr. Spence go to school? 7 A. He went to Colgate University, Hamilton, New 8 York. 9 Q. And what was his degree that he received at 10 Colgate? 11 A. He had a double major. I don't recall 12 exactly, but I think one of them was history, or world 13 history perhaps. 14 Q. Where did Mr. McHugh go to school? 15 A. Xavier University. 16 Q. And what was Mr. McHugh's degree in? 17 A. Business. 18 Q. And just to be clear, you're saying that in 19 your opinion Colgate is a more prestigious school than 20 Xavier University, correct? 21 A. I know that it's more difficult to get into. 22 So, yes, I agree with that. 23 Q. You also mentioned communication skills with 24 respect to Wall Street and the press, that Mr. McHugh's 25 communication skills with Wall Street and the press were</p>	Page 45	<p>1 interact with analysts and investment bankers to -- to, 2 number one, understand what might be feasible as you're 3 thinking through an acquisition or some acquisition 4 funding or a recapitalization, and you also want to 5 understand in any context how the Wall Street analysts 6 would view any potential merger combinations or 7 restructures or anything. 8 Q. Who specifically were these contacts that 9 Mr. Spence had on Wall Street? 10 A. I do not know. 11 Q. Did you speak to any of his contacts on Wall 12 Street? 13 A. I did not. 14 Q. Were you provided with a list of any of his 15 contacts on Wall Street? 16 A. I was not. 17 Q. Did any of the board members speak to any of 18 the purported contacts that Mr. Spence had on Wall 19 Street? 20 A. I do not know. 21 MR. SABA: If we can go ahead and go off the 22 record and take a break. He needs to change tapes. 23 THE VIDEOGRAPHER: The time is 10:32 a.m. 24 We're going off the record. 25 (A recess was taken from 10:32 a.m. to</p>

<p>1 11:03 a.m.)</p> <p>2 THE VIDEOGRAPHER: The time is 11:03 a.m.</p> <p>3 We're back on the record.</p> <p>4 BY MR. SABA:</p> <p>5 Q. Ms. Williams, with respect to Phil McHugh's</p> <p>6 merger and acquisition experience, do you know which</p> <p>7 mergers and acquisitions Phil McHugh led on behalf of</p> <p>8 Fifth Third Bank between 2017 and 2020?</p> <p>9 A. I don't believe he led any of them. So, no, I</p> <p>10 do not know.</p> <p>11 Q. Do you know which acquisitions took place,</p> <p>12 mergers and acquisitions took place on behalf of Fifth</p> <p>13 Third Bank between 2017 and 2020?</p> <p>14 A. The MB merger.</p> <p>15 Q. Any others?</p> <p>16 A. We may have done some Fintech acquisitions</p> <p>17 during that period, but I don't recall exactly.</p> <p>18 Q. What about wealth acquisitions?</p> <p>19 A. Yes. We might have purchased some wealth</p> <p>20 advisory firms. I don't recall their names.</p> <p>21 Q. Do you recall where they were?</p> <p>22 A. I know that we acquired one in North Carolina.</p> <p>23 I don't recall any of the others, if there were others.</p> <p>24 Q. And who led that acquisition in North</p> <p>25 Carolina?</p>	<p>Page 48</p> <p>1 Q. Chicago?</p> <p>2 A. Correct.</p> <p>3 Q. California?</p> <p>4 A. Correct.</p> <p>5 Q. Texas?</p> <p>6 A. Correct.</p> <p>7 Q. You mentioned Mr. McHugh's education at</p> <p>8 Xavier. Are you aware of any post graduate education</p> <p>9 that Mr. McHugh had?</p> <p>10 A. No.</p> <p>11 Q. Did you ever look into it?</p> <p>12 A. On the talent sheet that we were provided,</p> <p>13 which I assumed to be accurate, it said that he went to</p> <p>14 a seminar as part of Young Presidents and then Xavier.</p> <p>15 So I took that as accurate.</p> <p>16 Q. When would that have been provided to you?</p> <p>17 A. Would have been provided at every one of the</p> <p>18 December talent reviews that we had. So a few years, I</p> <p>19 don't recall the exact number of years when we started</p> <p>20 that process.</p> <p>21 Q. We were talking before about your</p> <p>22 communications with Greg Carmichael. In 2020, did you</p> <p>23 ask Greg Carmichael for assistance with a PPP loan?</p> <p>24 A. I mentioned to him the challenges that I was</p> <p>25 having applying for a PPP loan for one of my small</p>
<p>Page 49</p> <p>1 A. I do not know.</p> <p>2 Q. Do you know if Phil McHugh led that</p> <p>3 acquisition?</p> <p>4 A. I do not know.</p> <p>5 Q. And that would be --</p> <p>6 A. I know it was a very small acquisition.</p> <p>7 Q. And that was Franklin Partners; is that</p> <p>8 correct?</p> <p>9 A. I don't recall the exact name. I know that we</p> <p>10 own Franklin Partners. I don't recall when it was</p> <p>11 acquired.</p> <p>12 Q. Any other wealth acquisitions that took place</p> <p>13 during that time, 2017 to 2020?</p> <p>14 A. I know there were some very small wealth</p> <p>15 acquisitions. I don't recall the time frame.</p> <p>16 Q. Do you know which areas around the country</p> <p>17 that Phil McHugh was the head of regional banking for</p> <p>18 between 2017 and 2020?</p> <p>19 A. I believe he was head of regional banking for</p> <p>20 the bank. So that would have covered a number of</p> <p>21 different regions.</p> <p>22 Q. Throughout the country, correct?</p> <p>23 A. Throughout the swath of our footprint.</p> <p>24 Q. That would include Florida, correct?</p> <p>25 A. Correct.</p>	<p>Page 51</p> <p>1 businesses. He mentioned that it might be possible for</p> <p>2 Fifth Third to provide one, and I said I would prefer</p> <p>3 not to get it from Fifth Third if I could find another</p> <p>4 source for the PPP loan, which I did.</p> <p>5 Q. What is your past involvement with the process</p> <p>6 by which Fifth Third would identify and elect a new</p> <p>7 president and/or CEO?</p> <p>8 MR. CIOFFI: Objection. Time frame? The</p> <p>9 whole length of her board tenure?</p> <p>10 MR. SABA: Her experience.</p> <p>11 THE WITNESS: Well, I was on the board when</p> <p>12 the board -- and Kevin -- the board but more</p> <p>13 specifically the chairman of the board or perhaps</p> <p>14 the director at the time, I think -- I believe</p> <p>15 chairman of the board was negotiating with Kevin to</p> <p>16 retire or depart Fifth Third. So I was on the</p> <p>17 periphery of some of those discussions as well as</p> <p>18 involved with the discussions to promote Greg to</p> <p>19 CEO.</p> <p>20 BY MR. SABA:</p> <p>21 Q. And what was your involvement in that process?</p> <p>22 A. Jim Hackett, who was primarily leading that</p> <p>23 process and I had a few conversations about that</p> <p>24 transaction or that process. It was primarily handled</p> <p>25 by Jim Hackett at the time.</p>

<p>Page 52</p> <p>1 Q. Other than conversations with Jim Hackett, 2 what involvement did you have in that process?</p> <p>3 A. Well, the board had a number of conversations 4 among themselves. So I was involved in those 5 conversations as well.</p> <p>6 Q. How long did that process take?</p> <p>7 A. Could you be more specific about what you're 8 asking?</p> <p>9 Q. Sure. The process of identifying somebody to 10 replace Mr. Kabat and inserting Mr. Carmichael.</p> <p>11 A. So Mr. Carmichael was already the president of 12 the bank at that point. So the board had been 13 evaluating him as a potential successor for Mr. Kabat. 14 And at the June 2015 meeting, we had a number of 15 in-depth discussions about Mr. Kabat and the transition 16 to Mr. Carmichael occurred shortly thereafter.</p> <p>17 Q. When did the process begin to find a 18 replacement for Mr. Carmichael?</p> <p>19 A. You know, I would say the process was 20 continual. We would have a discussion, so it's an 21 ongoing process. We would have a discussion at least 22 once a year among the board members about succession 23 planning, and those conversations occasionally took 24 place at the June -- some of the June meetings but then 25 more formally at the December meetings where we</p>	<p>Page 54</p> <p>1 Q. What involvement, if any, do you have in the 2 preparation of the talent management deck?</p> <p>3 A. In the preparation of the deck, we did not 4 participate. I did not participate.</p> <p>5 (Plaintiff's Exhibit 3 is marked for 6 identification.)</p> <p>7 BY MR. SABA:</p> <p>8 Q. Ms. Williams, I've handed you a document that 9 has been marked as Exhibit Number 3. Can you identify 10 that for me, please?</p> <p>11 A. Yes. It is an email from Bob Shaffer.</p> <p>12 Q. And if you look on that first page, you agree 13 with me it's an email from Bob Shaffer first to Paula 14 Hennard, and then below that is an email from Bob 15 Shaffer dated Tuesday, December 3, 2019, 8:50 a.m. to 16 yourself and Mike McCallister with a copy to Greg 17 Carmichael; is that correct?</p> <p>18 A. That's correct.</p> <p>19 Q. Do you recall receiving this email from 20 Mr. Shaffer?</p> <p>21 A. I don't. But I see that I did receive it.</p> <p>22 Q. And the email references the talent management 23 deck that you were referring to before; is that correct?</p> <p>24 A. That's correct.</p> <p>25 Q. The email reads, "Attached is a draft of the</p>
<p>Page 53</p> <p>1 reviewed -- the entire board -- reviewed the entire 2 Enterprise committee and discussed succession potential 3 of a number of -- of all of the Enterprise committee for 4 a number of different positions.</p> <p>5 Q. What is the Enterprise committee?</p> <p>6 A. The Enterprise committee is the top 12 people 7 within the company who lead various functions, both line 8 and staff.</p> <p>9 Q. With respect to that December meeting, what 10 information or materials is the board provided with to 11 assess the Enterprise committee?</p> <p>12 MR. CIOFFI: Objection to the form. Time 13 frame. December meeting when?</p> <p>14 MR. SABA: Let's refer to December 2019.</p> <p>15 BY MR. SABA:</p> <p>16 Q. What information would the board be provided 17 with in order to assess the Enterprise committee?</p> <p>18 A. The board would be presented with a talent 19 management deck that had a profile of each of the 20 members of the Enterprise committee, and that was 21 written material. And then we would have a discussion 22 about each of the individuals.</p> <p>23 Q. Who prepares the talent management deck?</p> <p>24 A. I believe the HR department. I cannot tell 25 you precisely who.</p>	<p>Page 55</p> <p>1 deck we will use for the human capital and executive 2 talent management and succession plan updates with the 3 board on December 17th. We wanted to share with you 4 ahead of time for your review. We plan to distribute to 5 all boards members by mid next week. Please let me know 6 if you have any questions or other feedback. I 7 appreciate it. Looking forward to seeing you in a 8 couple weeks"; is that correct.</p> <p>9 MR. THOMAS: Peter, I think the mic is being 10 obscured.</p> <p>11 MR. SABA: It's blocked. All right. Sorry.</p> <p>12 THE WITNESS: Yes, that is correct.</p> <p>13 BY MR. SABA:</p> <p>14 Q. Did you review the draft talent deck that 15 Mr. Shaffer sent to you dated December 3rd?</p> <p>16 A. Yes. I would have. If I got it from him, I 17 would have received it -- or reviewed it.</p> <p>18 Q. And did you provide him with any questions or 19 feedback regarding the December 3rd talent deck?</p> <p>20 A. I don't recall.</p> <p>21 Q. With respect to Exhibit 3, do you see the 22 number that's on the bottom right-hand corner? We refer 23 to that as a Bates stamp number. It says Fifth Third 24 McHugh 001465; is that correct?</p> <p>25 A. That is correct.</p>

<p>Page 56</p> <p>1 Q. And that runs through the last page of Fifth 2 Third McHugh 001515; do you see that?</p> <p>3 A. 00 -- say again, please.</p> <p>4 MR. CIOFFI: The last page.</p> <p>5 BY MR. SABA:</p> <p>6 Q. The last page.</p> <p>7 A. Thank you.</p> <p>8 Q. Fifth Third McHugh, 001515; is that correct?</p> <p>9 A. Yes, that is correct.</p> <p>10 Q. And if you could review beginning with the 11 second page of Exhibit 3, Fifth Third McHugh 001466 12 through Fifth Third McHugh 001515 and verify that 13 appears to be the draft of the December 3, 2019 human 14 capital and executive talent management succession plan 15 that was sent to you by Mr. Shaffer.</p> <p>16 A. Yes, it appears to be that.</p> <p>17 Q. Was this the first version of the, as you call 18 it, talent management deck that you saw for 2019?</p> <p>19 A. I believe it is.</p> <p>20 Q. How is the talent management deck used by the 21 board at the December meeting?</p> <p>22 A. It is reviewed. It is discussed. We go 23 through each of the individuals and talk about the 24 individuals and talk about what they're currently doing, 25 what they're -- how we think they're developing, what</p>	<p>Page 58</p> <p>1 that correct?</p> <p>2 A. That is correct.</p> <p>3 Q. And once again, the information regarding key 4 strengths, key focus areas, potential, potential next 5 positions, and leader capabilities, that information was 6 already in there before you saw this; is that correct?</p> <p>7 A. That is correct. And I agree with this 8 information.</p> <p>9 Q. And do you know who put that information in 10 there?</p> <p>11 A. Again, the same group who would have prepared 12 the decks. I don't know exactly who prepared the decks.</p> <p>13 Q. But with respect to the HR team, do you have a 14 specific list of people in mind who that would be?</p> <p>15 A. Well, Bob Shaffer is on the HR team. I 16 believe Peg Julia was on the HR team at the time, and I 17 don't know any of the other names of who might have been 18 involved. I just don't know.</p> <p>19 Q. Looking through this document now, do you 20 recall if you had any changes?</p> <p>21 A. I don't recall.</p> <p>22 Q. Referring you to Fifth Third McHugh 001503.</p> <p>23 A. Okay.</p> <p>24 Q. This is a chart of CEO succession; is that 25 correct?</p>
<p>Page 57</p> <p>1 responsibilities they have, where we think -- what we 2 think their next position could be, you know. We talk 3 about all of the -- we talk about the strengths and the 4 focus areas and what we believe their opportunities are.</p> <p>5 Q. And with respect to strengths and focus areas, 6 you're talking about the specific page for each member 7 of the Enterprise committee; is that correct?</p> <p>8 A. That is correct.</p> <p>9 Q. If I could refer you to Fifth Third McHugh 10 001493. This is the talent deck page for Phil McHugh; 11 is that correct?</p> <p>12 A. That is correct.</p> <p>13 Q. And the information that we see with respect 14 to Mr. McHugh, both in terms of strengths, focus areas, 15 potential next positions and potential and leader 16 capabilities, that was already filled in there before 17 you saw this draft; is that correct?</p> <p>18 A. That is correct.</p> <p>19 Q. Do you know who put that information in there?</p> <p>20 A. I assume it was someone on the HR team.</p> <p>21 Q. By "the HR team," who do you mean?</p> <p>22 A. I -- whoever works on this. I don't know the 23 names specifically.</p> <p>24 Q. I am referring you now to Fifth Third McHugh 25 001496. That is the talent deck page for Tim Spence; is</p>	<p>Page 59</p> <p>1 A. That is correct.</p> <p>2 Q. This would have already been completed before 3 you saw this document; is that correct?</p> <p>4 A. That's correct.</p> <p>5 Q. Once again, do you know who would have filled 6 that information in?</p> <p>7 A. I do not.</p> <p>8 Q. Did you make any changes to the CEO succession 9 plan?</p> <p>10 A. No. I think the reason we didn't make any 11 changes is we felt very comfortable that Tim Spence 12 would be the appropriate next CEO.</p> <p>13 Q. And did you agree that that was three-plus 14 years away?</p> <p>15 A. Yes, or -- yes.</p> <p>16 Q. And did you agree that Phil McHugh was an 17 appropriate choice for an emergency successor for CEO?</p> <p>18 A. I would not have chosen Phil McHugh for that 19 role. I would have chosen Tayfun Tazun.</p> <p>20 Q. Did you give instruction to anyone that Phil 21 McHugh's name should be removed from emergency 22 successor?</p> <p>23 A. No.</p> <p>24 Q. And why is that?</p> <p>25 A. Because I've actually been through this</p>

<p>Page 60</p> <p>1 process with another board, and when you're in an 2 emergency situation, you look at what's on the piece of 3 paper but you're forced to make a decision fairly 4 quickly. And one of the thought processes that you go 5 through is you got two conflicting -- two conflicting -- 6 not conflicting -- two different constituencies. You 7 have the business that you need to keep running and you 8 have the shareholders that you need to make sure are 9 calm.</p> <p>10 So I think given Tayfun's relationship with 11 Wall Street and his knowledge of our shareholder base, 12 he would have been the emergency successor that I would 13 have strongly advocated for, and I believe that's true 14 of the other board members. So we needed to be able to 15 make sure, in an emergency, that the CFO could 16 communicate with Wall Street effectively, and that's 17 how -- often how many emergency successors are chosen. 18 That's how I've done it in the past.</p> <p>19 Q. What was Tayfun's relationship with Wall 20 Street?</p> <p>21 A. He was one of the primary spokesmen for the 22 bank with Wall Street.</p> <p>23 Q. What do you mean by that?</p> <p>24 A. Well, he's the chief financial officer. So he 25 often would be the person to talk to the analysts and</p>	<p>Page 62</p> <p>1 succession updates in 2019.</p> <p>2 Q. And just to be clear, Exhibit Number 4 is 3 Bates stamped Fifth Third McHugh 001104 through Fifth 4 Third McHugh 001154; is that correct?</p> <p>5 A. That is correct.</p> <p>6 (Plaintiff's Exhibit 5 is marked for 7 identification.)</p> <p>8 MR. CIOFFI: Counsel, is this Exhibit 5 that 9 you just handed me?</p> <p>10 MR. SABA: It is.</p> <p>11 BY MR. SABA:</p> <p>12 Q. Ms. Williams, we've handed you what has been 13 marked as Exhibit Number 5. Can you identify that for 14 me, please?</p> <p>15 A. Yes. It is a copy of the minutes of the 16 meeting of the board of directors from December 17, 17 2019.</p> <p>18 Q. Have you seen this document before?</p> <p>19 A. Yes.</p> <p>20 Q. Who presided over this meeting of the board of 21 directors?</p> <p>22 A. Mr. Carmichael.</p> <p>23 Q. Would you agree with me that Exhibit 5 is 24 Bates stamped Fifth Third McHugh 000266 through -- let 25 me clarify that again -- Fifth Third McHugh minutes</p>
<p>Page 61</p> <p>1 the investors.</p> <p>2 Q. Were you present for those conversations?</p> <p>3 A. No. Board members are typically not present 4 for those conversations.</p> <p>5 Q. Do you know if Mr. McCallister had any 6 changes, comments, or feedback regarding the 7 December 3rd draft of the talent deck?</p> <p>8 A. I do not know.</p> <p>9 Q. Did you discuss it with him at all?</p> <p>10 A. I don't recall.</p> <p>11 Q. Did you have any discussions with 12 Mr. Carmichael about the December 3rd draft of the 13 talent deck?</p> <p>14 A. Not to my knowledge.</p> <p>15 (Plaintiff's Exhibit 4 is marked for 16 identification.)</p> <p>17 BY MR. SABA:</p> <p>18 Q. Ms. Williams, I've handed you what's been 19 marked as Exhibit Number 4. Can you identify that for 20 me, please?</p> <p>21 A. Identify in what way?</p> <p>22 Q. Can you tell me what it is?</p> <p>23 A. Oh. It's an email from Greg -- Bob Shaffer to 24 the board members saying here's the deck we'll use for 25 the human capital and executive talent management</p>	<p>Page 63</p> <p>1 000266 through Fifth Third McHugh minutes 000283; is 2 that correct?</p> <p>3 A. That is correct.</p> <p>4 Q. Referring you to the second page of Exhibit 5, 5 which is Fifth Third McHugh minutes 000267, the first 6 full paragraph after the resolutions reads, "Thereafter 7 Mr. Carmichael and Mr. Shaffer initiated a review of 8 potential succession time lines and candidates for the 9 chief executive officer position. They reviewed top 10 succession candidates, including Mr. Spence, and 11 discussed the potential timelines for the readiness and 12 key development priorities for each such candidate."</p> <p>13 Do you see that?</p> <p>14 A. I do.</p> <p>15 Q. Who were the candidates that Mr. Carmichael 16 and Mr. Shaffer reviewed?</p> <p>17 A. I don't recall specifically.</p> <p>18 Q. Did they review individuals other than 19 Mr. Spence?</p> <p>20 A. They -- I don't recall specifically.</p> <p>21 Q. Separate and apart from these minutes, do you 22 ever recall Mr. Shaffer and Mr. Carmichael proposing 23 other candidates for CEO or president other than 24 Mr. Spence?</p> <p>25 A. Well, we would have discussed the potential</p>

<p>Page 64</p> <p>1 candidates in the talent management review, and we would 2 come -- you know, on all of them, and over a period of 3 years there were a number of candidates that we 4 discussed. We discussed -- we discussed Chad Borton. 5 We had originally discussed Lars Anderson when he was -- 6 when he joined the bank -- as a potential president and 7 as a potential successor to be president. We discussed 8 Chad Borton, as I mentioned, who was running parts of 9 the consumer bank. We discussed Brian Lamb. 10 So over the years, this was a CEO succession 11 process, was something that we talked about at every -- 12 at least annually, and we did review a slate of 13 candidates. The slate changed during -- over the years 14 as people either could hope to -- could -- the slate 15 changed as people's accomplishments and success in any 16 one role changed or didn't change. So, for example, 17 with Lars, we, you know, concluded after a certain 18 number of years of watching him in his position that he 19 was probably best suited for the position he held. 20 So over the years, the board did review a 21 number of candidates for the CEO succession. However, 22 at no time did we ever consider Phil McHugh a viable 23 candidate for that role. 24 Q. Was Phil McHugh one of the candidates 25 discussed by Mr. Carmichael and Mr. Shaffer during the</p>	<p>Page 66</p> <p>1 information in the talent deck confirmed for the board 2 that Mr. McHugh was not a viable candidate for 3 CEO/president for Fifth Third Bank? 4 A. I think the information in the talent deck 5 confirmed for the board that all of the observations we 6 have made of Mr. McHugh over the various years, all of 7 the discussions that we had, all of the presentations 8 that we had had, all of the questions that we had asked 9 him and the way that he answered those questions 10 confirmed for the board the board's -- the board's view 11 that he was not a viable candidate. 12 So the idea that he was not a viable candidate 13 developed over many years, over many board 14 presentations, and over many board discussions. I 15 believe that, you know, his board presentations were 16 somewhat superficial -- superficial is the wrong word. 17 I would say not as detailed as I think the board would 18 like. I do recall that whenever Mr. McHugh was 19 questioned about anything in his content his responses 20 tended to be somewhat brief and, again, superficial and 21 that was in direct contrast to Mr. Spence's answers to 22 the questions. 23 The best way I can kind of explain that or go 24 into it more in depth, if you ask, is by an analogy, if 25 that's okay to use. If you ask Mr. McHugh and</p>
<p>Page 65</p> <p>1 December 2019 meeting? 2 A. He was discussed at the talent review meeting, 3 which includes the entire board. And in the deck that 4 you just showed me, he -- his potential -- is cited as 5 moderate potential. So based on the belief of the board 6 that he wasn't a viable candidate to be the CEO because 7 he didn't have -- he didn't have the experience that we 8 were looking for. He didn't have the Fintech 9 background, and he didn't have a lot of other skills 10 that we thought were important. I would say he was not 11 ever discussed in detail as a viable CEO candidate. 12 Q. And I think you referenced the information in 13 the talent deck. That information in the talent deck 14 would have confirmed that Mr. McHugh was not a viable 15 candidate for CEO/president; is that correct? 16 MR. CIOFFI: Objection to the form of the 17 question. What information are you talking about? 18 BY MR. SABA: 19 Q. Do you understand my question? 20 A. Could you repeat it? 21 Q. Certainly. 22 You referenced the talent deck and how it 23 described Mr. McHugh's potential as moderate. And with 24 respect to that, he was never considered a viable 25 candidate for president or CEO. My question is just the</p>	<p>Page 67</p> <p>1 Mr. Spence to describe a house, Mr. McHugh would say 2 it's -- this is just an analogy -- he would say it's two 3 bedrooms, 2 1/2 baths, it's tan, it is a split-level 4 house, it's got an attached garage and it was built in 5 1980. Mr. Spence would say all of those things and then 6 go on to say it's on a lot that's a half an acre. The 7 lot is fenced, and it's got plenty of room in the 8 backyard for children to play. There's a great grade 9 school about a half a mile to the east and a terrific 10 middle school and high school a mile to the west. 11 Another mile to the south is a shopping center that has 12 a convenience store, a drugstore. 13 He would -- Mr. Spence could speak with great 14 detail and conviction and authority. So he could paint 15 a picture for the board of what the situation is and how 16 we -- how he would -- how he would explain it, he could 17 create an oil painting for the board of that house. 18 Mr. McHugh provided what I often thought of as a 19 charcoal sketch of a house. And that really is the 20 difference in communication that was very profound. 21 Q. These criticisms that you identified of 22 Mr. McHugh's presentation style and/or answers to 23 questions, were those ever communicated to Mr. McHugh? 24 A. I do not know the answer to that. I -- I 25 presume that somewhere in the -- I don't know the</p>

<p>Page 68</p> <p>1 answer. But that having been said, Mr. McHugh was 2 present at all of the meetings where other people were 3 answering questions with much more depth of -- apparent 4 depth of knowledge. So he could certainly witness how 5 other people in the room were answering questions. 6 Q. Were those criticisms ever communicated to 7 Mr. Carmichael about Mr. McHugh? 8 A. Well, one of the criticisms of Mr. McHugh was 9 often that he read his presentations to the board and 10 the board -- he was not necessarily alone in that. Tim 11 Spence did not do that, but other members of the 12 management did that, and that particular item was 13 certainly communicated to Mr. Carmichael and perhaps 14 even to the -- certainly to Mr. Carmichael. 15 Q. When were those communicated to 16 Mr. Carmichael? 17 A. At various points over the years. I can't 18 point to a specific date, but I can say that it was a 19 recurring theme with Mr. McHugh and other of the 20 executives. We wanted them to have a conversation with 21 us, not simply read the board decks that they -- that 22 were provided. And Mr. Spence was able to do that, 23 again, with great -- great depth of knowledge. He 24 evidenced a depth of knowledge about Fifth Third Bank, 25 about the industry, about Fintech, about the</p>	<p>Page 70</p> <p>1 great detail how Mr. McHugh was considered over the 2 years, and you're misstating her testimony to make 3 an argument. That's totally improper. So please 4 rephrase your question. 5 BY MR. SABA: 6 Q. Do you understand the question? 7 A. No. 8 Q. Okay. Let me ask you again. 9 A. Please. 10 Q. Fifth Third McHugh minutes 000267, I 11 previously read to you the language from the first full 12 paragraph following the resolutions, "That thereafter 13 Mr. Carmichael and Mr. Shaffer initiated a review of 14 potential succession, time lines and candidates for the 15 chief executive officer position. They reviewed top 16 succession candidates, including Mr. Spence." 17 With respect to the reference to candidates, 18 referencing your prior testimony regarding Mr. McHugh 19 that he was never considered as a viable candidate for 20 CEO or president, is it fair to say he was not included 21 as one of the candidates that Mr. Carmichael and 22 Mr. Shaffer referenced at the December 2019 meeting? 23 MR. CIOFFI: Objection to the form of the 24 question. Rambling and confusing, but if you can 25 answer.</p>
<p>Page 69</p> <p>1 competitors, about the strategy of each of the 2 competitors, sometimes about the -- he didn't really 3 talk about the management of the competitors, but he 4 knew them, and he could -- he could talk with quite 5 amazing facility and insights into the current state of 6 the banking industry. 7 We hired Mr. Spence in 2015 because we did not 8 have that capability in-house, and that was an important 9 hire for us because we had had to outsource our strategy 10 because we did not have any -- anybody in-house that had 11 the strategic -- the ability to communicate -- to draft 12 and communicate a strategy with the skill that 13 Mr. Spence had. And he developed that skill, I believe, 14 over his years at Oliver Wyman and his -- he also spent 15 some time in the -- in I believe in -- working for a dot 16 com, so also understood both the dot com industries -- 17 excuse me -- dot com and Fintech industries, and was 18 able to communicate the future of digital banking. 19 Q. Recognizing that the board never considered 20 Mr. McHugh as a candidate for president and CEO, is it 21 fair to say that Mr. Carmichael and Mr. Shaffer did not 22 discuss Mr. McHugh as a candidate, as referenced on 23 Fifth Third McHugh minutes 000267? 24 MR. CIOFFI: Objection. Argumentative. 25 Misstates her prior testimony. She explained in</p>	<p>Page 71</p> <p>1 THE WITNESS: I don't recall the other 2 candidates who may have been mentioned. I just 3 don't recall. 4 BY MR. SABA: 5 Q. Is there a chance that Mr. McHugh was included 6 in that list of candidates? 7 A. Is there a chance? I -- I don't know if there 8 was a chance or not. 9 Q. Okay. All right. 10 A. I know that the board did not believe he was a 11 viable candidate, so -- but I don't know when these 12 minutes were drafted, if there was a chance or not. 13 Q. If I could refer you back to Exhibit 4, 14 please. 15 A. Uh-huh. 16 Q. And referring to Fifth Third McHugh 001132. 17 Does the talent deck page for Mr. McHugh reference 18 anywhere his -- the deficiencies in his communication 19 skills? 20 MR. CIOFFI: Objection. The document speaks 21 for itself. You may answer, if you have an answer. 22 THE WITNESS: I'm trying to read some of the 23 small print. I don't see any reference to 24 communication skills. I do see a reference to his 25 moderate potential, which I assume might</p>

<p>1 incorporate his communication skills.</p> <p>2 BY MR. SABA:</p> <p>3 Q. And, again, that "moderate potential," that</p> <p>4 was put in before the board or yourself actually</p> <p>5 reviewed this talent deck for the first time; is that</p> <p>6 correct?</p> <p>7 A. Yes.</p> <p>8 Q. When was Lars Anderson eliminated as a</p> <p>9 potential candidate for president and CEO?</p> <p>10 A. I don't recall the exact date. It would</p> <p>11 probably have been in the -- this is an estimate,</p> <p>12 probably 2017 or maybe '18. I don't recall precisely.</p> <p>13 Q. When was Chad Burton eliminated as a potential</p> <p>14 candidate for president and CEO?</p> <p>15 A. It's actually Borton.</p> <p>16 Q. Borton, I'm sorry. Thank you. Could you</p> <p>17 spell that, just to make sure the court reporter has it</p> <p>18 down correctly, please?</p> <p>19 A. I believe it was B-o-r-t-o-n.</p> <p>20 Q. Thank you.</p> <p>21 A. He resigned from the bank, I don't recall the</p> <p>22 exact year. He took the presidency of another bank.</p> <p>23 Q. And when was Brian Lamb considered as a</p> <p>24 candidate for president and CEO?</p> <p>25 A. I believe he's in this talent deck as a</p>	<p>Page 72</p> <p>1 Q. Who determined the potential time lines for</p> <p>2 readiness for Mr. Spence?</p> <p>3 A. It was a combination of the board and</p> <p>4 management. The board wanted to make sure that if Tim</p> <p>5 Spence was the ultimate choice to be president, that we</p> <p>6 felt 100 percent confident that we were making the right</p> <p>7 choice. And so we would have said he needs to -- a</p> <p>8 little bit more time in the role. So those kinds of</p> <p>9 discussions we would have had about his readiness and</p> <p>10 the amount of time we wanted to continue to evaluate him</p> <p>11 before we felt he was the right choice.</p> <p>12 So he was definitely the leading candidate.</p> <p>13 If you look at the people in the proxy, the proxy is</p> <p>14 usually the top five individuals. Tim Spence was in the</p> <p>15 proxy. Phil McHugh was not in the proxy. And as we</p> <p>16 evaluated Tim Spence's capabilities, we wanted, as I</p> <p>17 said, we wanted to make sure that he had somewhat more</p> <p>18 seasoning, somewhat more experience, somewhat more, you</p> <p>19 know, time in the -- time in the role so that we could</p> <p>20 appropriately -- we, meaning the board -- could</p> <p>21 appropriately evaluate his readiness.</p> <p>22 Q. And at that point in time, how much seasoning</p> <p>23 and experience did the board determine that Mr. Spence</p> <p>24 needed?</p> <p>25 A. Do you mean -- when you say "at that point in</p>
<p>Page 73</p> <p>1 potential successor. I'd have to check that, but the</p> <p>2 board believed that his runway was long, longer than</p> <p>3 others.</p> <p>4 Q. What do you mean by "his runway"?</p> <p>5 A. That it would take him longer to potentially</p> <p>6 become the CEO than perhaps others because he needed</p> <p>7 more exposure and more experience.</p> <p>8 Q. How long was Mr. Lamb's runway?</p> <p>9 A. I believe there was something in here that</p> <p>10 said it was -- I'd have to go back, but in the previous</p> <p>11 one you showed me, I believe it said, as I recall, I</p> <p>12 believe somewhere in this deck it says seven-plus years.</p> <p>13 MR. CIOFFI: Counsel, I think for the record</p> <p>14 the witness is referring to Bates stamp number</p> <p>15 Fifth Third McHugh 001142 of Exhibit 4.</p> <p>16 BY MR. SABA:</p> <p>17 Q. Referring back to Exhibit Number 5, and,</p> <p>18 again, to Fifth Third McHugh minutes 000267, in the</p> <p>19 second sentence of the paragraph that I referred to</p> <p>20 before, "They reviewed top succession candidates,</p> <p>21 including Mr. Spence, and discussed the potential time</p> <p>22 lines for their readiness and key development priorities</p> <p>23 for each such candidate."</p> <p>24 Do you see where it says that?</p> <p>25 A. I do.</p>	<p>Page 75</p> <p>1 time," do you mean 2019?</p> <p>2 Q. Correct. At the December 2019 meeting where</p> <p>3 you're discussing this topic.</p> <p>4 A. I think the board felt anywhere from two to</p> <p>5 four years. It was partially a function of how well he</p> <p>6 would perform during that period. Mr. Carmichael had</p> <p>7 not identified precisely his desired retirement date.</p> <p>8 He did assure the board that he would not retire until</p> <p>9 he felt he had a very qualified successor ready to take</p> <p>10 the position. So, you know, I think three years was a</p> <p>11 good time frame, and I think the board agreed that three</p> <p>12 years would -- could be a good amount of time.</p> <p>13 Q. That's the same runway or timeline that we see</p> <p>14 set forth in Exhibit 4, I believe?</p> <p>15 A. That's correct.</p> <p>16 Q. It's on the same exhibit that you</p> <p>17 identified before. It's both on Fifth Third</p> <p>18 McHugh 001142 and again on Fifth Third McHugh 001135;</p> <p>19 is that correct?</p> <p>20 MR. CIOFFI: Again, counsel, for purposes of</p> <p>21 making the record clear, are you talking about</p> <p>22 timeline to president or timeline to CEO? Because</p> <p>23 one's relevant and one is not.</p> <p>24 BY MR. SABA:</p> <p>25 Q. Do you understand my question?</p>

<p>Page 76</p> <p>1 A. I was answering about the CEO, which was three 2 years. 3 Q. Correct. 4 A. It looks as if the president was sooner than 5 that. So I'm not completely sure which one you were 6 asking about. 7 Q. Well, 001142 of Exhibit Number 4? 8 A. Uh-huh. 9 Q. Is the CEO succession plan, correct? 10 A. That's correct. 11 Q. And then 001135 also mentions CEO three-plus 12 years; is that correct? 13 A. That is correct. 14 MR. CIOFFI: For the record, that's not the 15 subject matter of this lawsuit, CEO succession. I 16 mean the CEO position happened after the lawsuit 17 was filed. 18 MR. SABA: This is the subject of this 19 lawsuit. 20 MR. CIOFFI: You should read your complaint. 21 MR. SABA: It says both president and CEO 22 position. 23 MR. CIOFFI: Tim Spence was named CEO more 24 than a year after -- 25 MR. SABA: Correct.</p>	<p>Page 78</p> <p>1 BY MR. SABA: 2 Q. Referring you back to Fifth Third McHugh 3 minutes 000267, the paragraph references the "key 4 development priorities" that were discussed for 5 Mr. Spence. What were those key development priorities? 6 A. I believe one was that Greg wanted to start to 7 introduce Tim to the particular analysts that follow us. 8 So I think he was more involved in the investor 9 presentations. I think he wanted Tim more visible. 10 Those were two that I recall -- or one -- well, two, 11 really, that I recall. I don't recall the others. He 12 may have been -- he may also have wanted him to have 13 somewhat more exposure to the regulators, but I'm -- 14 it's a vague memory on that. 15 Q. Anything else that you can recall? 16 A. Not that I can recall specifically. 17 Q. Was any decision made at the December 17, 2019 18 meeting regarding Tim Spence becoming the next 19 president? 20 A. No. 21 Q. Was any decision made at the December 17, 2019 22 meeting that Tim Spence was the only candidate for 23 president for Fifth Third Bank? 24 A. We didn't really make decisions at this -- at 25 the meeting. We talked about potentials and a lot of</p>
<p>Page 77</p> <p>1 MR. CIOFFI: -- the lawsuit was filed. So 2 it's not the subject matter. 3 MR. SABA: We can -- we can -- it is the 4 subject matter of this lawsuit. 5 MR. CIOFFI: I guess the judge will eventually 6 decide that. 7 MR. SABA: As we well know, yes. 8 MR. CIOFFI: But wait. For the purpose of 9 your question, what are you asking about? 10 President or CEO or both? 11 MR. SABA: She understood my question and she 12 answered it. 13 MR. CIOFFI: I think she said she didn't know 14 what you were talking about. That there were two 15 different time lines that are on this particular 16 Exhibit 5 and -- 17 MR. SABA: We'll continue on, Michael. You 18 can create your own testimony later, but we're 19 going to continue with the deposition. She already 20 answered my question. 21 MR. CIOFFI: She didn't. 22 MR. SABA: Well, you can ask her the question, 23 then. 24 MR. CIOFFI: I will. 25 MR. SABA: I'm sure you will.</p>	<p>Page 79</p> <p>1 things can change between -- between meetings, between, 2 you know -- a lot of things can change. So in terms of 3 decisions, no. But decision for the president is made 4 when the decision is made. And as you know, we have to 5 do a number of regulatory filings at a time when any 6 important decision like that is made. 7 So I would say there were no decisions made at 8 that meeting. There were -- people were leaning towards 9 Tim. People thought Tim was by far and away the only 10 internal candidate who was qualified, but no decisions 11 were made. 12 Q. Do you make notes of any of the board meetings 13 you attend? 14 A. I will make notes in Diligent in advance of 15 the board meetings, but generally -- well, generally at 16 the executive session, I may take a note or two to 17 review with Greg, but then I just throw those notes 18 after the board meetings. 19 Q. You don't keep any of your notes? 20 A. No. 21 Q. What about your notes on materials and 22 preparation for the board meeting? 23 A. No, generally not. 24 Q. Do you review the minutes of board meetings 25 before they're finalized?</p>

<p>Page 80</p> <p>1 A. In some cases I have, but not regularly.</p> <p>2 Q. In which cases have you?</p> <p>3 A. I think -- I think when I was chairman, I did.</p> <p>4 It's kind of a dim memory. But as lead director, I did</p> <p>5 not. I don't believe I did. That having been said,</p> <p>6 they're not really finalized until the board votes on</p> <p>7 them at the board meeting. So there may have been</p> <p>8 changes at the board meeting that all the board members</p> <p>9 would have seen, but I just don't recall the specifics.</p> <p>10 Q. How frequently are changes made to board</p> <p>11 minutes at a board meeting?</p> <p>12 A. Occasionally. I would say occasionally.</p> <p>13 Q. Were there any changes made to the</p> <p>14 December 2019 board minutes?</p> <p>15 A. I don't recall. I don't believe so, but I</p> <p>16 don't recall.</p> <p>17 Q. Do you recall any changes being made to any of</p> <p>18 the minutes for board meetings between January 1 of 2019</p> <p>19 through September of 2020?</p> <p>20 A. I don't recall.</p> <p>21 Q. Other than as summarized in the board minutes,</p> <p>22 do you have any specific recollection regarding</p> <p>23 presentations made by Mr. -- by Phil McHugh between</p> <p>24 January 1 of 2019 through September of 2020?</p> <p>25 MR. CIOFFI: Objection. She already testified</p>	<p>Page 82</p> <p>1 What I do recall is that -- so the</p> <p>2 presentations were made by Kris Garrett, Kevin Lavender,</p> <p>3 Phil McHugh, and Tim Spence. And what I recall about</p> <p>4 their presentations is that the language, in terms of</p> <p>5 how people were going to manage the business going</p> <p>6 forward, the language in Kevin Lavender's presentation</p> <p>7 and Phil McHugh's presentation, two separate lines of</p> <p>8 business, was identical language, the same -- the very</p> <p>9 same language. Kris Garrett had different language.</p> <p>10 Tim Spence had very detailed language. And what I</p> <p>11 recall is that Phil McHugh's -- some of Phil McHugh's</p> <p>12 action plans on how he was going to win in the business</p> <p>13 he was running at the time was to monitor things and</p> <p>14 keep doing what he was doing and, you know, there was a</p> <p>15 great lack of specificity, and in some cases, identical</p> <p>16 language to another business leader, which I had never</p> <p>17 seen before in a board presentation.</p> <p>18 Q. And this is the meeting that you're not sure</p> <p>19 if you just attended by phone or by video; is that</p> <p>20 correct?</p> <p>21 A. That is correct. Most of the meetings during</p> <p>22 COVID were by video, but I believe some were telephonic</p> <p>23 and I just don't recall which one this was.</p> <p>24 Q. Other than the June 2020 presentation by Phil</p> <p>25 McHugh, do you recall -- do you have any other specific</p>
<p>Page 81</p> <p>1 to a number of presentations, but you may answer.</p> <p>2 THE WITNESS: I believe there was a</p> <p>3 presentation in June of 2020 that all of the lines</p> <p>4 of business individuals would have made, it was a</p> <p>5 telephonic meeting because it was during COVID.</p> <p>6 BY MR. SABA:</p> <p>7 Q. Did you attend by phone?</p> <p>8 A. Yes.</p> <p>9 Q. Was it a video teleconference or just a phone</p> <p>10 conference?</p> <p>11 A. I don't recall which it was. They tended to</p> <p>12 be video, but I don't recall for that specific one.</p> <p>13 Q. And do you have a specific recollection of</p> <p>14 Mr. McHugh's presentation at the June 2020 meeting?</p> <p>15 A. What I recall about that is that there were</p> <p>16 four presenters and they were presenting their line of</p> <p>17 business, I think it was results, perhaps, or, you know,</p> <p>18 how COVID had impacted the business, that was one page.</p> <p>19 And then another page was how they were going to operate</p> <p>20 the business going forward, what -- how we were going</p> <p>21 to -- I'm trying to recall exactly -- how we were going</p> <p>22 to defend ourselves, and then how we were going to win</p> <p>23 in the marketplace. Or defend ourselves and prove our</p> <p>24 performance or something like that. I don't recall</p> <p>25 the specifics.</p>	<p>Page 83</p> <p>1 recollection of presentations made by Phil McHugh at</p> <p>2 board meetings between January 1 of 2019 and</p> <p>3 September 2020?</p> <p>4 A. I do not.</p> <p>5 (Plaintiff's Exhibit 6 is marked for</p> <p>6 identification.)</p> <p>7 BY MR. SABA:</p> <p>8 Q. Ms. Williams, I've handed you what's been</p> <p>9 marked as Exhibit Number 6. Can you identify that for</p> <p>10 me, please.</p> <p>11 A. Yes. The minutes of the board of directors</p> <p>12 meeting June 16, 2020.</p> <p>13 Q. Just to confirm, Exhibit 6 is marked Fifth</p> <p>14 Third McHugh minutes 000454 through Fifth Third McHugh</p> <p>15 minutes 000477; is that correct?</p> <p>16 A. Mine goes through 000495.</p> <p>17 MR. CIOFFI: As does mine.</p> <p>18 MR. SABA: Does yours? All right. Let me see</p> <p>19 that.</p> <p>20 BY MR. SABA:</p> <p>21 Q. Let me rephrase my question, now that I have a</p> <p>22 full packet as well.</p> <p>23 Can you confirm for me that Exhibit 6 is</p> <p>24 marked Fifth Third McHugh minutes 000454 through Fifth</p> <p>25 Third McHugh minutes 000495?</p>

<p>Page 84</p> <p>1 A. Yes, I can confirm that.</p> <p>2 Q. Perfect. Thank you. The minutes would also</p> <p>3 confirm that your attendance was by telephone; is that</p> <p>4 correct? As opposed to videoconference?</p> <p>5 A. It says teleconference. So I -- oh,</p> <p>6 directors -- I see that, yes, correct, by telephone.</p> <p>7 Q. When the board meets in executive session, are</p> <p>8 there any minutes that are taken of the executive</p> <p>9 session?</p> <p>10 A. No.</p> <p>11 Q. How does the board confirm what happened at</p> <p>12 the executive session?</p> <p>13 A. What do you mean by "confirm"?</p> <p>14 Q. Is any action taken during the executive</p> <p>15 session?</p> <p>16 A. No. The executive session is a chance for the</p> <p>17 board to talk among ourselves, talk about how we</p> <p>18 believed the board went -- how the board meeting was</p> <p>19 conducted, how -- any changes we would like to see in</p> <p>20 future board meetings, and just, you know, assessment.</p> <p>21 As I said, one of the things we talked about more than</p> <p>22 once was the fact that we would like the presenters not</p> <p>23 to read their presentations but rather to have a</p> <p>24 conversation with the board about the matters at hand.</p> <p>25 So it was that type of discussion.</p>	<p>Page 86</p> <p>1 A. I don't recall.</p> <p>2 Q. Did you ever review any of Tim Spence's</p> <p>3 employee engagement surveys?</p> <p>4 A. I don't believe so.</p> <p>5 Q. Did you ever review Phil McHugh's employee</p> <p>6 engagement surveys?</p> <p>7 A. I don't believe so.</p> <p>8 Q. Did you ever review Tim Spence's customer</p> <p>9 experience surveys?</p> <p>10 A. I don't believe so.</p> <p>11 Q. Did you ever review Phil McHugh's customer</p> <p>12 experience surveys?</p> <p>13 A. I don't believe so.</p> <p>14 Q. Did you ever review the -- Tim Spence's</p> <p>15 financial performance relative to goals for his</p> <p>16 divisions?</p> <p>17 A. We did have a line of business reviews. I</p> <p>18 don't recall the details or what specifically they</p> <p>19 covered, but we did at times discuss the performance of</p> <p>20 each of the divisions.</p> <p>21 Q. And did you ever see income statements and</p> <p>22 balance sheets specifically broken out for just the</p> <p>23 divisions managed by Mr. Spence?</p> <p>24 A. I -- certainly not balance sheets I would not</p> <p>25 have seen. Income statements I don't recall.</p>
<p>Page 85</p> <p>1 MR. SABA: We can go off the record.</p> <p>2 THE VIDEOGRAPHER: The time is 12:18 p.m. We</p> <p>3 are going off the record.</p> <p>4 (A recess was taken from 12:18 p.m. to</p> <p>5 1:04 p.m.)</p> <p>6 THE VIDEOGRAPHER: The time is 1:04 p.m. We</p> <p>7 are back on the record.</p> <p>8 BY MR. SABA:</p> <p>9 Q. Ms. Williams, did you ever review Mr. Spence's</p> <p>10 employee annual performance reviews?</p> <p>11 A. We would have discussed his performance at the</p> <p>12 December -- I'm sorry, excuse me -- the February</p> <p>13 compensation committee meeting, and Greg would have</p> <p>14 given an update on how he did during the prior year.</p> <p>15 And I don't recall if we saw his specific performance</p> <p>16 review or not, but we would have discussed his</p> <p>17 compensation, how it was set, why it was set, and what</p> <p>18 it was based upon.</p> <p>19 Q. But a physical copy of his annual performance</p> <p>20 review, you can't say whether or not you've ever seen</p> <p>21 those?</p> <p>22 A. I don't recall.</p> <p>23 Q. With respect to Phil McHugh, did you ever see</p> <p>24 or review any of his annual employee performance</p> <p>25 reviews?</p>	<p>Page 87</p> <p>1 Q. What about with respect to Mr. McHugh, did you</p> <p>2 ever see financial performance information for the</p> <p>3 divisions that he managed relative to annual goals?</p> <p>4 A. We would have seen -- I believe we would have</p> <p>5 seen at a high level how the divisions did relative to</p> <p>6 goals, but I don't recall the specifics.</p> <p>7 Q. And would you have seen anything broken out by</p> <p>8 the individual and the divisions they managed?</p> <p>9 A. I don't recall.</p> <p>10 Q. Do you ever recall anyone at Fifth Third</p> <p>11 referring to Phil McHugh as "the Silver Fox"?</p> <p>12 A. No.</p> <p>13 (Plaintiff's Exhibit 7 is marked for</p> <p>14 identification.)</p> <p>15 BY MR. SABA:</p> <p>16 Q. Ms. Williams, can you identify Exhibit</p> <p>17 Number 7 for me, please.</p> <p>18 A. Board minutes -- the board minutes from the</p> <p>19 September 21, 2020 board of directors meeting.</p> <p>20 Q. You would agree with me that Exhibit Number 7</p> <p>21 is Bates stamped Fifth Third McHugh minutes 000508</p> <p>22 through Fifth Third McHugh minutes 000516; is that</p> <p>23 correct?</p> <p>24 A. That is correct.</p> <p>25 Q. In the first full paragraph under Legal,</p>

<p>Page 88</p> <p>1 Regulatory, and Government Affairs Update, the second</p> <p>2 sentence reads, "Ms. Zaunbrecher noted that the most</p> <p>3 significant litigation exposures continue to be with</p> <p>4 respect to sales practices enforcement litigation and</p> <p>5 related follow-on suits, payment card interchange fee</p> <p>6 cases and Klopfenstein."</p> <p>7 Do you see that sentence?</p> <p>8 A. I see that sentence.</p> <p>9 Q. Do you agree with that sentence?</p> <p>10 A. Yes, I agree with that sentence.</p> <p>11 Q. And in the next sentence she points out that</p> <p>12 the sales practices litigation -- and she has a</p> <p>13 parenthetical CFPB; do you see that?</p> <p>14 A. I see that.</p> <p>15 Q. Are you familiar with the CFPB litigation?</p> <p>16 A. I am.</p> <p>17 Q. And with respect to that, that is still</p> <p>18 ongoing now; is that correct?</p> <p>19 A. That is correct.</p> <p>20 (Plaintiff's Exhibit 8 is marked for</p> <p>21 identification.)</p> <p>22 BY MR. SABA:</p> <p>23 Q. Ms. Williams, you've been handed what's been</p> <p>24 marked as Exhibit Number 8. Can you identify that for</p> <p>25 me, please?</p>	<p>Page 90</p> <p>1 Q. Did you ever speak to Mr. Beaudin?</p> <p>2 A. I did.</p> <p>3 Q. When did you speak to Mr. Beaudin?</p> <p>4 A. I spoke to him in the -- I believe it was in</p> <p>5 the summer of 2015; I don't recall the exact date. In</p> <p>6 the summer of 2015, we met in Chicago to talk about the</p> <p>7 work he was doing for Fifth Third. I believe it was</p> <p>8 summer.</p> <p>9 Q. And what work was he doing for Fifth Third in</p> <p>10 2015?</p> <p>11 A. He was developing some guidelines and some --</p> <p>12 he was helping clarify the qualities that we were</p> <p>13 looking for in the next CEO, the winning formula, I</p> <p>14 think it's referred to. So he developed that document</p> <p>15 in 2015 to help the board think through how to proceed</p> <p>16 with the CEO change.</p> <p>17 Q. Other than that meeting with Mr. Beaudin in</p> <p>18 the summer of 2015, did you have any other meetings with</p> <p>19 him?</p> <p>20 A. I do not recall.</p> <p>21 Q. Other than that meeting, did you have any</p> <p>22 other direct communication with him by email or</p> <p>23 otherwise?</p> <p>24 A. I do not recall specifically if I did or did</p> <p>25 not.</p>
<p>Page 89</p> <p>1 A. That is the board of directors of Fifth Third</p> <p>2 Bank NA board of directors minutes of meeting of</p> <p>3 September 21, 2020.</p> <p>4 Q. And just to distinguish that from Exhibit 7,</p> <p>5 Exhibit 7 is the minutes for Fifth Third Bancorp for</p> <p>6 that same day, correct?</p> <p>7 A. Correct.</p> <p>8 Q. And Exhibit Number 8 is Bates stamped Fifth</p> <p>9 Third McHugh minutes 000517 through 000527; is that</p> <p>10 correct?</p> <p>11 A. Correct.</p> <p>12 Q. In the second full paragraph under Talent</p> <p>13 Management, it indicates, "Mr. Shaffer then introduced</p> <p>14 Guy Beaudin and Chuck Evans with RHR International who</p> <p>15 were engaged to perform an assessment of Mr. Spence's</p> <p>16 capabilities to be a successor candidate to</p> <p>17 Mr Carmichael"; do you see that?</p> <p>18 A. I see that.</p> <p>19 Q. And I believe you referenced RHR International</p> <p>20 before; is that correct?</p> <p>21 A. Correct.</p> <p>22 Q. And Mr. Beaudin from RHR International, what</p> <p>23 is your understanding of the role he serves with RHR</p> <p>24 International?</p> <p>25 A. He's a partner.</p>	<p>Page 91</p> <p>1 Q. The third sentence in that paragraph reads,</p> <p>2 "Mr. Shaffer also reminded the board members of the</p> <p>3 succession planning discussion at the June 2020 board</p> <p>4 meeting in which the board approved the CEO profile to</p> <p>5 be utilized by Mr. Beaudin and Mr. Evans to assess</p> <p>6 Mr. Spence."</p> <p>7 Do you see that?</p> <p>8 A. I see that, yes.</p> <p>9 Q. And the CEO profile you're referring to, is</p> <p>10 that the winning formula?</p> <p>11 A. Yes.</p> <p>12 Q. The next sentence reads, "Mr. Shaffer noted</p> <p>13 that the CEO profile identified essential behaviors</p> <p>14 related to business management, leadership,</p> <p>15 interpersonal skills, and personal attributes deemed</p> <p>16 critical to assess Fifth Third Bank president and CEO</p> <p>17 successor candidates."</p> <p>18 Do you see that?</p> <p>19 A. Yes.</p> <p>20 Q. Do you agree with that statement?</p> <p>21 A. I do agree with that statement.</p> <p>22 (Plaintiff's Exhibit 9 is marked for</p> <p>23 identification.)</p> <p>24 BY MR. SABA:</p> <p>25 Q. Ms. Williams, I've handed you what's been</p>

<p>1 marked as Exhibit Number 9. Can you identify that for 2 me, please?</p> <p>3 A. Yes. It's an email sent from Bob Shaffer to 4 Greg Carmichael.</p> <p>5 Q. Have you ever seen this document before?</p> <p>6 A. I don't believe so.</p> <p>7 Q. And Exhibit Number 9 is marked Fifth Third 8 McHugh 006414 through Fifth Third McHugh 006415; is that 9 correct?</p> <p>10 A. That is correct.</p> <p>11 Q. The email is dated June 8, 2020; is that 12 correct?</p> <p>13 A. That's correct.</p> <p>14 Q. And the subject is "Guy Conversation"; is that 15 right?</p> <p>16 A. That's correct.</p> <p>17 Q. And under Key Highlights and Next Steps, the 18 first point is, "Guy agrees that if Tim is 'the' 19 successor, don't add Tayfun and Phil formerly. 20 Although, he would recommend, at a minimum, we discuss 21 with Marsha that she/the board is okay with only having 22 Tim assessed by Guy. He said he has seen a few boards 23 surprised in the past the CEO/CHRO did have at least one 24 other internal candidate assessed"; do you see that?</p> <p>25 A. I see that.</p>	<p>Page 92</p>	<p>1 it, please?</p> <p>2 BY MR. SABA:</p> <p>3 Q. Did you hear my question?</p> <p>4 A. I heard your question, yes.</p> <p>5 Q. Go ahead.</p> <p>6 A. The independent directors evaluated Mr. McHugh 7 and those independent directors, some of those 8 independent -- at least one of those independent 9 directors had been on the board since 2006. I have been 10 on the board since 2009. Many others joined the board 11 in '11, '12, '13. This was a group of anywhere from 12 12 to 15 independent directors, all of whom had extensive 13 business experience, extensive experience evaluating 14 people and assessing people, and we had the chance to 15 see Mr. McHugh and Mr. Spence and all of the other 16 executives, who at one time or another -- the other two 17 executives who were on the list for possible succession, 18 we had a chance to listen to and evaluate all of those 19 people. So there was a lot of years of independent 20 directors evaluating management and the likelihood that 21 they could succeed to be the president.</p> <p>22 Q. Well, if the review of the independent 23 directors, based upon your board observations, was 24 adequate, why hire an RHR at all to do an independent 25 assessment of a candidate?</p>
<p>1 Q. Did Greg Carmichael or Bob Shaffer ever 2 discuss with you the concept of Tim Spence being the 3 only person assessed by RHR?</p> <p>4 A. I don't recall, but had they discussed with 5 me, I would have supported that decision.</p> <p>6 Q. And why is that?</p> <p>7 A. Because he was, in my view and in the view of 8 the entire board, he was the really only viable internal 9 candidate that we had available or only internal 10 candidate who was qualified, as I said before, based on 11 his experience, his education, his knowledge, his 12 skills, his knowledge of the digital world, which was 13 significantly changing banking at the time, and his 14 overall strategic vision.</p> <p>15 Q. And to be clear, that's based on the 16 information that had been provided to you, correct?</p> <p>17 A. It's based on the many years of observations 18 that we had of both Phil and Tim Spence in comparing and 19 contrasting their different presentations and skills 20 that they brought to the board room.</p> <p>21 Q. Was there ever an independent assessment done 22 of Phil McHugh to determine his qualifications to be 23 president and CEO of Fifth Third Bank?</p> <p>24 MR. CIOFFI: Objection. You mean other than 25 by the independent directors? Could you clarify</p>	<p>Page 93</p>	<p>1 A. It's kind of like the Good Housekeeping seal 2 of approval. I mean, it's always nice to have one 3 person also vet the person. I see in here that 4 Mr. Beaudin also interviewed all of Phil's -- or excuse 5 me, Tim Spence's peers and based on -- it says based on 6 the feedback that his peers identified no concerns about 7 him being the next CEO, is the way I read this.</p> <p>8 So that's something that we would, you know, 9 we didn't do a -- we didn't do a review of Tim Spence's 10 peers, but it looks as if RHR did, which means Phil 11 would have been a participant in that process, and it 12 says that none of his peers responded that there were 13 any concerns identified. This is in the document you 14 just gave me.</p> <p>15 Q. So it's fair to say RHR does a more detailed 16 analysis than just the assessment of the independent 17 directors, correct?</p> <p>18 MR. CIOFFI: Objection. Argumentative. 19 Assumes facts not in evidence. You can answer. 20 BY MR. SABA:</p> <p>21 Q. Mr. Cioffi is going to object to any question 22 he doesn't like, but go ahead.</p> <p>23 MR. CIOFFI: No, come on, Counsel. The record 24 will speak for itself. I'm going to object to any 25 improper question, including argumentative</p>

<p>1 questions in which you state a conclusion and then 2 want her to agree to. She's here as a fact 3 witness. Ask her facts. 4 THE WITNESS: Could you repeat the question? 5 MR. SABA: Certainly. I'd be happy to. 6 BY MR. SABA: 7 Q. Ms. Williams, RHR does a more detailed 8 analysis and investigation than the board does, correct? 9 A. I would -- I don't agree with that. I would 10 say that RHR does a different type of analysis. The 11 board had ample time to analyze the -- what's the word 12 I'm trying to think of? The real time performance of 13 director -- or excuse me, management as they present to 14 the board. So we had -- we had a process for making 15 sure that all of the senior talent presented to the 16 board. We had a chance to interact with them at dinners 17 and, again, in the case of Phil McHugh, this goes back 18 at least with one director to 2006, with Tim back to 19 2010. 20 So we had plenty of opportunities to evaluate 21 the skills and capabilities and qualities. So I would 22 say RHR does a different kind of analysis than the board 23 did as they watched candidates develop over the years. 24 Q. RHR actually spoke to direct reports; is that 25 correct?</p>	<p>Page 96</p> <p>1 deciding factor as to whether or not they should be the 2 next CEO. There are many other components that go into 3 that decision rather than simply how the direct reports 4 feel about them. 5 Q. That's just one factor, correct? 6 A. What's just one factor? 7 Q. How the direct reports feel and respond and 8 work with their -- with that individual, it's just one 9 factor you might consider in terms of their management 10 skills or otherwise? 11 A. Certainly the ability to lead a team is 12 important. 13 Q. Going back to my earlier question, there was 14 no independent outside entity that was ever hired to do 15 an independent assessment of Phil McHugh? 16 MR. CIOFFI: Objection. States facts not in 17 evidence. She's already answered the question. Do 18 you want her to change her answer or answer it 19 again? 20 BY MR. SABA: 21 Q. Ms. Williams, go ahead. 22 A. The board did not feel it was necessary to 23 have an independent assessment of Mr. McHugh for the 24 president's position because the board, in its 25 collective wisdom, did not feel he was qualified. The</p>
<p>Page 97</p> <p>1 A. That is what this -- your report -- the report 2 that you gave me says. 3 Q. Correct. The board never speaks to any direct 4 reports of Tim Spence or Phil McHugh, correct? 5 A. Some direct reports of Phil and Tim would have 6 presented to the board meetings. So in that context, we 7 would have spoken to them. 8 Q. You spoke to them, but you never interviewed 9 them specifically about Phil McHugh and his 10 qualifications and his ability to be a president or CEO 11 of Fifth Third? 12 A. We did not because in the board's collective 13 judgment of 400 years of corporate leadership, the board 14 did not believe Phil had the qualifications to be the 15 next CEO of Fifth Third. 16 Q. And with respect to -- and, again, you've 17 talked about, you did -- they do the board 18 presentations. You never spoke to their direct reports. 19 No one at the board ever looked at any of Phil McHugh's 20 annual performance reviews, correct? 21 A. We would hear -- I don't believe so, but we 22 would hear the results of that performance during the 23 compensation discussion. 24 So -- and I would argue that how his direct 25 reports felt about their boss is not necessarily a</p>	<p>Page 99</p> <p>1 board would not have been comfortable with him as 2 president. 3 Q. And the board didn't do an independent review 4 of anybody other than Tim Spence, correct? 5 A. That is correct, because we believed Tim 6 Spence was by far and away the most qualified to be the 7 next president. He had extensive industry knowledge. 8 He was hired in 2015 to bring his strategic capabilities 9 to the board. He had -- he was named digital banker of 10 the year in 2018. So he clearly had his pulse on -- 11 that was by the American Banker Magazine, which is a 12 very well-respected publication in the banking industry. 13 He clearly was, as Mr. Beaudin noted, he "is a creative 14 forward-thinking strategic thinker who balances 15 objective data with his subjective experience to derive 16 innovative solutions to business challenges." That was 17 the independent assessment we got Phil -- or excuse me, 18 of Tim, and I think that in part reflects what the board 19 had observed ever since Phil's -- or excuse me, Tim 20 started presenting to the board in 2011. 21 Q. What is required to be digital banker of the 22 year? 23 A. I don't know specifically, but I believe it's 24 knowledge of the digital space and ability to 25 communicate and develop products, but I don't know</p>

<p>1 specifically.</p> <p>2 Q. Where did you get that guess from?</p> <p>3 MR. CIOFFI: Objection. Argumentative.</p> <p>4 THE WITNESS: Just I don't --</p> <p>5 MR. CIOFFI: She's not guessing.</p> <p>6 BY MR. SABA:</p> <p>7 Q. That's fine. If you're not guessing --</p> <p>8 A. Yeah.</p> <p>9 Q. -- tell me the source of information you</p> <p>10 identify setting forth the criteria for establishing how</p> <p>11 somebody is named digital banker of the year. Where</p> <p>12 does that come from?</p> <p>13 A. I don't know.</p> <p>14 Q. You don't know at all; is that right?</p> <p>15 A. I don't.</p> <p>16 Q. Okay.</p> <p>17 A. But what I do know that the American Banker</p> <p>18 Magazine is -- has been around a long time and is very</p> <p>19 well regarded, and I'm quite certain they have criteria</p> <p>20 that they evaluate because that's the kind of high</p> <p>21 caliber magazine that would have a fairly rigorous</p> <p>22 process. I'm simply not familiar with the process.</p> <p>23 Q. You don't know what their process is?</p> <p>24 A. I do not know their process.</p> <p>25 Q. What is the American Banker Magazine</p>	<p>Page 100</p> <p>1 A. I do not know. I know simply that Tim Spence</p> <p>2 was chosen.</p> <p>3 Q. Was Tim Spence's selection as digital banker</p> <p>4 of the year part of the reason why he was selected as</p> <p>5 president of Fifth Third Bank?</p> <p>6 A. I would say that his selection by the American</p> <p>7 Banker Magazine for that accolade was simply -- so first</p> <p>8 of all, it reflected well on Fifth Third because it</p> <p>9 suggested that we had some very qualified</p> <p>10 forward-looking digital -- people familiar with the</p> <p>11 digital world. And was it a criteria for being</p> <p>12 selected? No.</p> <p>13 The reason he was selected is that he, over a</p> <p>14 long period of time, from 2010 until he was selected, he</p> <p>15 consistently performed at a very high level in every</p> <p>16 single one of his assignments. He consistently gave the</p> <p>17 board in-depth knowledge. He led the strategic planning</p> <p>18 organization for the board. He was very instrumental in</p> <p>19 a number of the acquisitions we did, particularly the</p> <p>20 large acquisitions, the important acquisitions -- not</p> <p>21 the smaller acquisitions, but the large acquisitions,</p> <p>22 and particularly the MB Financial acquisition where he</p> <p>23 was critical in MB wanting to sell themselves to Fifth</p> <p>24 Third, and I was told that specifically by the MB CEO.</p> <p>25 So it was a combination of factors that all of the board</p>
<p>1 circulation?</p> <p>2 A. I do not know.</p> <p>3 Q. Do you know the publisher's name?</p> <p>4 A. I do not know. But I recall when I was a</p> <p>5 banker from 1973 until 1988, everybody read the American</p> <p>6 Banker Magazine.</p> <p>7 Q. Who's everybody?</p> <p>8 A. Everybody, all of my peers at First Chicago.</p> <p>9 It was -- it's an important magazine in the banking</p> <p>10 industry.</p> <p>11 Q. Okay. And you base that on because the other</p> <p>12 people in your office at First Chicago read it in the</p> <p>13 mid '70s; is that correct?</p> <p>14 A. I base it on the fact that it's been a</p> <p>15 magazine that's been an industry magazine for many years</p> <p>16 and well regarded.</p> <p>17 Q. Do you currently subscribe to American Banker</p> <p>18 Magazine?</p> <p>19 A. I do not.</p> <p>20 Q. How long has it been since you've subscribed</p> <p>21 to American Banker Magazine?</p> <p>22 A. I do not recall.</p> <p>23 Q. Do you know how many candidates were</p> <p>24 considered for digital banker of the year by American</p> <p>25 Banker Magazine?</p>	<p>Page 101</p> <p>1 used in coming to the conclusion that Tim was really by</p> <p>2 far and away the most qualified person to be the next</p> <p>3 president.</p> <p>4 Q. Did the board ever consider any outside</p> <p>5 candidates for the position of president or CEO for</p> <p>6 Fifth Third Bank?</p> <p>7 A. We discussed whether or not we should go</p> <p>8 outside and concluded that the candidate that we had,</p> <p>9 that our internal candidate, was very strong and we did</p> <p>10 not need to go outside. As you know, as many people</p> <p>11 know or believe, it is always -- can always be risky to</p> <p>12 go outside when you're looking for a new CEO or when</p> <p>13 you're looking for any new position. Oftentimes -- I</p> <p>14 think there used to be a statistic, I don't know if it's</p> <p>15 true, that 50 percent of outside hires don't work out.</p> <p>16 So this is such a critically important role,</p> <p>17 we wanted to make sure that we had someone that we knew</p> <p>18 well, had been in front of the board for at least ten</p> <p>19 years, either in a consultant's role or as a business</p> <p>20 unit leader, that we felt had all of the qualifications</p> <p>21 that we were looking for in the next president and CEO.</p> <p>22 Q. Just to confirm -- and I believe you indicated</p> <p>23 this here earlier -- between your meeting with Guy</p> <p>24 Beaudin in the summer of 2015 and the September 21, 2020</p> <p>25 board meeting, you did not have any conversations with</p>

<p>1 Guy Beaudin?</p> <p>2 A. I don't recall specifically because he was --</p> <p>3 he was Greg Carmichael's coach when he first took over</p> <p>4 the CEO role and I may have spoken to Guy in that</p> <p>5 capacity, but I don't recall specifically.</p> <p>6 Q. Let me narrow the time frame then, just to</p> <p>7 confirm. Between the time that RHR was first retained</p> <p>8 with respect to assessing Tim Spence and the</p> <p>9 September 21, 2020 board meeting, you did not have any</p> <p>10 conversations or communications with Mr. Beaudin?</p> <p>11 A. I do not recall. I just don't recall.</p> <p>12 Q. Based upon Exhibit Number 9, it would appear</p> <p>13 that Mr. Shaffer and Mr. Carmichael were the ones having</p> <p>14 direct communication with Mr. Beaudin; is that correct?</p> <p>15 A. They --</p> <p>16 MR. CIOFFI: Objection to the form of the</p> <p>17 question. Are you asking her if that's what the</p> <p>18 document says or if your assumption is correct?</p> <p>19 BY MR. SABA:</p> <p>20 Q. Go ahead. You can answer.</p> <p>21 A. Could you repeat the question?</p> <p>22 Q. Sure. Based upon the information provided in</p> <p>23 Exhibit Number 9, it would appear that Mr. Shaffer and</p> <p>24 Mr. Carmichael were the individuals having direct</p> <p>25 contact with Mr. Beaudin; is that correct?</p>	<p>Page 104</p> <p>1 that "Greg, Guy, and I have worked to develop the</p> <p>2 attached CEO profile, which Guy will utilize as one</p> <p>3 component to assess Tim's capabilities."</p> <p>4 Do you see that?</p> <p>5 A. I do.</p> <p>6 Q. He goes on to say, "I would appreciate your</p> <p>7 review of the attached and confirmation back to me that</p> <p>8 you are either okay with the profile or have any changes</p> <p>9 to the components of it so I can give Guy the go-ahead</p> <p>10 to continue his assessment work."</p> <p>11 Do you see that as well?</p> <p>12 A. I do.</p> <p>13 Q. It says, "Please respond to me by July 24th";</p> <p>14 is that correct?</p> <p>15 A. That is correct.</p> <p>16 Q. Did you review the attached profile?</p> <p>17 A. I would have reviewed it.</p> <p>18 Q. And did you respond back to Bob Shaffer?</p> <p>19 A. I do not recall.</p> <p>20 Q. How would you have communicated your response</p> <p>21 back to him?</p> <p>22 A. Either a phone call or an email.</p> <p>23 Q. And do you recall whether or not you were okay</p> <p>24 with the profile or had any changes?</p> <p>25 A. I do not recall. It looks fairly similar to</p>
<p>Page 105</p> <p>1 A. They definitely would have had contact with</p> <p>2 Mr. Beaudin. I don't know if they were the only people</p> <p>3 that had contact with Mr. Beaudin.</p> <p>4 Q. Okay.</p> <p>5 A. It says here that he wanted to interview Tim's</p> <p>6 peers, so...</p> <p>7 Q. As part of the assessment process; is that</p> <p>8 correct?</p> <p>9 A. Correct, uh-huh.</p> <p>10 (Plaintiff's Exhibit 10 is marked for</p> <p>11 identification.)</p> <p>12 BY MR. SABA:</p> <p>13 Q. Ms. Williams, you've been handed what's been</p> <p>14 marked as Exhibit Number 10. Can you identify that for</p> <p>15 me, please.</p> <p>16 A. It is an email from Bob Shaffer to it looks</p> <p>17 like the human capital and compensation committee</p> <p>18 members dated July 17, 2020.</p> <p>19 Q. Have you seen Exhibit 10 before?</p> <p>20 A. I received it as an email.</p> <p>21 Q. And you'd agree with me that Exhibit 10 is</p> <p>22 Bates stamped Fifth Third McHugh 001457 through Fifth</p> <p>23 Third McHugh 001463; is that correct?</p> <p>24 A. That is correct.</p> <p>25 Q. And within that email, Bob Shaffer indicates</p>	<p>Page 107</p> <p>1 the profile we developed in 2015, so -- but I don't</p> <p>2 recall.</p> <p>3 Q. Do you recall if any other members of the</p> <p>4 human capital compensation committee had any changes to</p> <p>5 the CEO profile?</p> <p>6 A. I would not know that.</p> <p>7 (Plaintiff's Exhibit 11 is marked for</p> <p>8 identification.)</p> <p>9 BY MR. SABA:</p> <p>10 Q. Can you identify Exhibit Number 11 for me,</p> <p>11 please?</p> <p>12 A. It is an email from Bob Shaffer to Guy Beaudin</p> <p>13 dated July 23, 2020.</p> <p>14 Q. Have you seen Exhibit Number 11 before?</p> <p>15 A. I don't believe so.</p> <p>16 Q. And just to be clear, Exhibit Number 11 is</p> <p>17 Bates stamped Fifth Third McHugh to 001071 through Fifth</p> <p>18 Third McHugh 001032; is that correct?</p> <p>19 A. That is correct.</p> <p>20 Q. Actually, let me clarify that just to make</p> <p>21 sure we're clear on the Bates stamp pages. Exhibit</p> <p>22 Number 11 includes Fifth Third McHugh 001071 through</p> <p>23 Fifth Third McHugh 001073, and then includes the</p> <p>24 attached July draft of the CEO profile Bates stamped</p> <p>25 Fifth Third McHugh 001013 through Fifth Third McHugh</p>

<p>1 001032. Page 108</p> <p>2 A. I see the last digit. Yes, that is correct.</p> <p>3 Q. Is that correct?</p> <p>4 A. Yes, that is correct.</p> <p>5 Q. In the email that Mr. Shaffer sends to</p> <p>6 Mr. Beaudin, he indicates, "Hope all is well. I have</p> <p>7 reviewed the updated profile with Greg and with the</p> <p>8 Human Capital & Compensation Committee members. Only</p> <p>9 one very minor tweak. We can consider it finalized."</p> <p>10 Do you see where it says that?</p> <p>11 A. Yes.</p> <p>12 Q. Is it fair to say that if you had any</p> <p>13 recommended changes at all to the prior version sent to</p> <p>14 you, it was a minor tweak as described by Mr. Shaffer;</p> <p>15 is that correct?</p> <p>16 A. Yes.</p> <p>17 (Plaintiff's Exhibit 12 is marked for</p> <p>18 identification.)</p> <p>19 BY MR. SABA:</p> <p>20 Q. Ms. Williams, you've been handed what's been</p> <p>21 marked as Exhibit Number 12. Can you identify that for</p> <p>22 me, please.</p> <p>23 A. It is an email from Bob Shaffer to Greg</p> <p>24 Carmichael dated August 18, 2020.</p> <p>25 Q. Have you ever seen this document before?</p>	<p>Page 110</p> <p>1 A. I may have spoken with Mr. Carmichael, I don't</p> <p>2 recall specifically. I don't believe I spoke with</p> <p>3 Mr. Shaffer. I may have. I don't recall that at all,</p> <p>4 but I may have spoken with Greg.</p> <p>5 Q. Exhibit 12 also includes an email from</p> <p>6 Mr. Shaffer it looks like to himself on various notes</p> <p>7 from Monday, August 17, 2020. That was forwarded as</p> <p>8 part of the August 18th email. And on the second page</p> <p>9 of this document, he has, "Greg, do you want to remind</p> <p>10 Marsha of the upcoming succession discussion in</p> <p>11 September?"</p> <p>12 Do you recall any conversations you and</p> <p>13 Mr. Carmichael had about that upcoming succession</p> <p>14 discussion in September?</p> <p>15 A. I think Greg would have called me to remind</p> <p>16 me. I just -- but I don't recall. I may have, I just</p> <p>17 don't recall.</p> <p>18 (Plaintiff's Exhibit 13 is marked for</p> <p>19 identification.)</p> <p>20 BY MR. SABA:</p> <p>21 Q. Ms. Williams, can you identify Exhibit Number</p> <p>22 13 for me, please?</p> <p>23 A. It is a board summary regarding Tim Spence.</p> <p>24 It was prepared by RHR.</p> <p>25 Q. Have you seen this document before?</p>
<p>Page 109</p> <p>1 A. No.</p> <p>2 Q. In the email, Mr. Shaffer indicates to</p> <p>3 Mr. Carmichael, "Follow-up items from this morning's</p> <p>4 talent management update discussion." In the second set</p> <p>5 of bullet points, it says, "Talk to each board member</p> <p>6 about the succession discussion and Saema." And then</p> <p>7 your name is listed first.</p> <p>8 Do you recall any discussions with</p> <p>9 Mr. Carmichael or Mr. Shaffer after this August 18th</p> <p>10 email regarding succession discussion and Saema?</p> <p>11 MR. THOMAS: Saema. She was a corporate</p> <p>12 employee at the time.</p> <p>13 MR. SABA: I'm sorry. It's pronounced Saema.</p> <p>14 MR. THOMAS: Saema. Just so you have it right</p> <p>15 on the record.</p> <p>16 THE WITNESS: I'm sorry. Could you repeat the</p> <p>17 question?</p> <p>18 BY MR. SABA:</p> <p>19 Q. There's a reference here that they were going</p> <p>20 to talk to each board member about the succession</p> <p>21 discussion and Saema.</p> <p>22 A. So --</p> <p>23 Q. And my question to you is, did you have any</p> <p>24 conversations with Mr. Shaffer or Mr. Carmichael about</p> <p>25 succession discussions or Saema?</p>	<p>Page 111</p> <p>1 A. Yes.</p> <p>2 Q. When did you see this document?</p> <p>3 A. I would have seen that at the September board</p> <p>4 meeting.</p> <p>5 Q. And just to be clear, Exhibit Number 13 is</p> <p>6 Bates stamped Fifth Third McHugh 001033 through Fifth</p> <p>7 Third McHugh 001040; is that correct?</p> <p>8 A. That's correct.</p> <p>9 (Plaintiff's Exhibit 14 is marked for</p> <p>10 identification.)</p> <p>11 BY MR. SABA:</p> <p>12 Q. Ms. Williams, you've been handed what's been</p> <p>13 marked as Exhibit Number 14. Can you identify that</p> <p>14 document for me, please?</p> <p>15 A. It is Executive Assessment Development Report</p> <p>16 for Tim Spence, presented by RHR dated July 31, 2020.</p> <p>17 Q. Have you ever seen Exhibit Number 14 before?</p> <p>18 A. I do not recall if I've seen it.</p> <p>19 Q. Just to be clear, Exhibit Number 14 is Bates</p> <p>20 stamped Fifth Third McHugh 000954 through Fifth Third</p> <p>21 McHugh 000976; is that correct?</p> <p>22 A. That is correct.</p> <p>23 Q. Ms. Williams, referring you back to Number 11.</p> <p>24 A. Number 11? Number 11.</p> <p>25 Q. Do you have Exhibit 11 in front of you?</p>

<p>Page 112</p> <p>1 A. I do.</p> <p>2 Q. If I could refer you to the fifth page of</p> <p>3 Exhibit 11, which is actually Fifth Third McHugh 001015,</p> <p>4 and it's essentially the second printed page of the CEO</p> <p>5 profile; do you see that?</p> <p>6 A. I see that, yes. I got a blank page in</p> <p>7 between.</p> <p>8 Q. If you can turn to the next one, please.</p> <p>9 A. Yes.</p> <p>10 Q. Are you on Fifth Third McHugh 001015?</p> <p>11 A. Yes.</p> <p>12 Q. This page identifies essential leadership</p> <p>13 behaviors; is that correct?</p> <p>14 A. Yes.</p> <p>15 Q. With respect to the first category,</p> <p>16 Establishing Strategic Direction, do you have any</p> <p>17 objective information or data indicating that as of</p> <p>18 September 22, 2020, Tim Spence was superior to or better</p> <p>19 than Phil McHugh with respect to establishing strategic</p> <p>20 direction?</p> <p>21 A. Yes. We hired him in 2010 to do our strategic</p> <p>22 plan and hired him in 2015 to -- excuse me, 2011 and</p> <p>23 2013 to do the strategic plan because we had no one</p> <p>24 internally that was capable, in our view, in</p> <p>25 management's view, in the board's view, of doing that</p>	<p>Page 114</p> <p>1 hire Tim Spence.</p> <p>2 Q. Historically, how often has the bank hired</p> <p>3 outside consultants for various issues?</p> <p>4 A. The bank hires out consultants for all sorts</p> <p>5 of issues.</p> <p>6 Q. Including strategy?</p> <p>7 A. Including strategy when we didn't have those</p> <p>8 skills inside. But once we had those skills inside, we</p> <p>9 decided to simply buy the skills, which is why we hired</p> <p>10 Mr. Spence, because we could keep -- we could continue</p> <p>11 to pay Oliver Wyman or we could bring that skill set</p> <p>12 inside with the hopes or -- not the hopes, that's the</p> <p>13 wrong word -- with the expectation that he would help us</p> <p>14 set a strong strategic direction over the next -- or the</p> <p>15 coming few years.</p> <p>16 Q. Is the hiring of Oliver Wyman the only time</p> <p>17 that Fifth Third Bank has ever hired a consultant with</p> <p>18 respect to strategic issues?</p> <p>19 A. I don't know that. The bank's been around</p> <p>20 since 1858. I can't answer that.</p> <p>21 Q. Within the time frame that you've been here,</p> <p>22 is Oliver Wyman the only outside consultant that Fifth</p> <p>23 Third Bank has hired with respect to strategic issues?</p> <p>24 A. I don't specifically know that. I believe</p> <p>25 they are the only bank we hired to draft our strategic</p>
<p>Page 113</p> <p>1 plan. We then hired him in 2015 to run the strategy</p> <p>2 group because we felt, based on his extensive experience</p> <p>3 at Oliver Wyman, with working across various</p> <p>4 companies -- excuse me, various banks and various</p> <p>5 countries and various transactions, that he was a very</p> <p>6 strong strategic -- very strong at setting and executing</p> <p>7 on a strategic direction.</p> <p>8 Q. And with respect to Phil McHugh, what is your</p> <p>9 basis of saying he lacked the ability to establish</p> <p>10 strategic direction at an equivalent level?</p> <p>11 A. He did not have the depth of experience with</p> <p>12 other banks in terms of understanding what was going on,</p> <p>13 particularly with Fintechs, and he did not have, in our</p> <p>14 view, as global a view of the banking industry or as</p> <p>15 much experience in dealing with -- or he did not</p> <p>16 evidence to the board any experience with dealing with a</p> <p>17 significant number of other bankers in the industry.</p> <p>18 And it looks, from what I can see from RHR's</p> <p>19 assessment of Tim, they ranked Tim as absolutely top</p> <p>20 ranking in terms of being able to establish strategic</p> <p>21 direction. And I think the board would agree with that.</p> <p>22 Tim was superb at strategy. That's what he did at</p> <p>23 Oliver Wyman for nine years, including helping Fifth</p> <p>24 Third starting in 2010, 2011. If we had had that talent</p> <p>25 internally in Mr. McHugh, we would not have needed to</p>	<p>Page 115</p> <p>1 plan, but there may have been other consulting firms</p> <p>2 that were hired for other strategic issues that I'm just</p> <p>3 not familiar with. For example, I can think of one</p> <p>4 example. We certainly hire outside IT consultants to</p> <p>5 help us with our IT infrastructure strategy, which I</p> <p>6 think of as strategic to the future of the bank, but --</p> <p>7 you know, so there may be other situations, but</p> <p>8 certainly in the context of developing a strategic plan</p> <p>9 to present to the board, Oliver Wyman is the only firm</p> <p>10 I'm familiar with or that I can recall.</p> <p>11 Q. Referring you back to page Fifth Third McHugh</p> <p>12 001015, under Establishing Strategic Direction, the</p> <p>13 first bullet point indicates, "The CEO must possess the</p> <p>14 vision to outline a balanced strategy of organic growth,</p> <p>15 acquisitions, and optimization, rooted in deep knowledge</p> <p>16 of the banking industry"; do you see that?</p> <p>17 A. I see that.</p> <p>18 Q. Is it your opinion that Mr. Spence possessed a</p> <p>19 deeper or superior knowledge of the banking industry</p> <p>20 than Mr. McHugh?</p> <p>21 A. Yes. Absolutely. It's not only my opinion</p> <p>22 but the opinion of the full board.</p> <p>23 Q. And what is that based upon?</p> <p>24 A. That is based upon his many years as an</p> <p>25 external consultant visiting with and working with the</p>

<p>Page 116</p> <p>1 CEOs of many, many major banks around the country and</p> <p>2 around the world, which gave him an in-depth knowledge</p> <p>3 of the banking industry. He also had quite a deep</p> <p>4 knowledge of the Fintech industry and the inroads that</p> <p>5 Fintechs were making into the traditional banking</p> <p>6 industry. And we could -- we can feel the impact of</p> <p>7 Fintechs on our business, and it was critical for the</p> <p>8 bank to have someone inside who was really conversant</p> <p>9 with the developments going on in Fintech and again,</p> <p>10 given Tim Spence's background, he had that knowledge.</p> <p>11 Q. What was your understanding of the depth of</p> <p>12 Mr. McHugh's knowledge of the banking industry?</p> <p>13 A. Mr. McHugh understands the roles or the</p> <p>14 businesses that he ran, but that is a subset of the</p> <p>15 knowledge that's needed to run and lead a bank as large</p> <p>16 and complex as Fifth Third. The board did not believe</p> <p>17 he had the skills to be able to effectively lead Fifth</p> <p>18 Third going forward.</p> <p>19 Q. And as of September 21, 2020, what was your</p> <p>20 understanding of the businesses that Phil McHugh had</p> <p>21 run?</p> <p>22 A. He had run a wealth. He had run business</p> <p>23 banking. And I believe consumer.</p> <p>24 Q. Anything else?</p> <p>25 A. I don't recall.</p>	<p>Page 118</p> <p>1 A. Well, I probably should say the regulatory</p> <p>2 framework because I know that he did meet in Washington</p> <p>3 with -- when he was at Oliver Wyman, with regulatory</p> <p>4 agencies to understand the future of bank regulation,</p> <p>5 and then when he came to Fifth Third, he would have had</p> <p>6 experience working with regulators.</p> <p>7 Q. What was that experience?</p> <p>8 A. Just I think the normal experience that any</p> <p>9 banker has is the regulators come in and ask you</p> <p>10 questions about your businesses.</p> <p>11 Q. And what was his experience with policy makers</p> <p>12 in Washington?</p> <p>13 A. My understanding is when he was a consultant,</p> <p>14 he met with policy makers in Washington to understand</p> <p>15 the way the policy makers were thinking about financial</p> <p>16 regulation.</p> <p>17 Q. Which policy makers did he meet with?</p> <p>18 A. I do not know.</p> <p>19 Q. When did he meet with these policy makers?</p> <p>20 A. I do not know. He worked for Oliver Wyman at</p> <p>21 the time, not Fifth Third.</p> <p>22 Q. How was it communicated to you that he met</p> <p>23 with policy makers?</p> <p>24 A. Well, when we first interviewed Tim, he walked</p> <p>25 through some of his experience and he was very, very</p>
<p>Page 117</p> <p>1 Q. As of September 2020, how long had Mr. Spence</p> <p>2 been working in or with the banking industry?</p> <p>3 A. Let's see. He'd been at Oliver Wyman for nine</p> <p>4 years and he joined us in 2015. So that would mean he</p> <p>5 joined Oliver Wyman in 2006 and he had some experience</p> <p>6 with tech companies before that, but I do not know if it</p> <p>7 was in financial services or not.</p> <p>8 Q. So how many years would that have been?</p> <p>9 A. Let's see. 2006 to -- what was your end date?</p> <p>10 I apologize.</p> <p>11 Q. 2020, September.</p> <p>12 A. 2020. So 14 years.</p> <p>13 Q. And how many years had Mr. McHugh worked in</p> <p>14 the banking industry as of September 2020?</p> <p>15 A. I don't know exactly. Probably over 30. But</p> <p>16 time and grade is not what we were looking for in a CEO</p> <p>17 so -- or president. So what we were looking for was</p> <p>18 strategic vision, leadership, the understanding of the</p> <p>19 Fintech industry, experience -- broad experience with</p> <p>20 Wall Street, with regulators, with policy makers in</p> <p>21 Washington, with digital banking, with strong</p> <p>22 communication skills. So as I said, time and grade was</p> <p>23 not a deciding factor.</p> <p>24 Q. Explain to me about Mr. Spence's broad</p> <p>25 experience with regulators.</p>	<p>Page 119</p> <p>1 well regarded at Oliver Wyman. As I said, when I met</p> <p>2 with the CEO of MB Financial, he also spoke in depth</p> <p>3 about -- he spoke to us, to me in particular, about</p> <p>4 Tim's background and his skills and his contacts within</p> <p>5 the banking industry, which included, you know,</p> <p>6 regulatory people in Washington.</p> <p>7 Q. Were you ever provided with a list of the</p> <p>8 policy makers that Mr. Spence met with and the dates</p> <p>9 that he met with them?</p> <p>10 A. No, I was not.</p> <p>11 MR. CIOFFI: Counsel, we've been going a</p> <p>12 little more than an hour.</p> <p>13 MR. SABA: We can take a break if you want to</p> <p>14 take one.</p> <p>15 MR. CIOFFI: Do you want to --</p> <p>16 MR. SABA: That's fine.</p> <p>17 MR. CIOFFI: But how much time do you need?</p> <p>18 THE VIDEOGRAPHER: The time is 2:09 p.m.</p> <p>19 We're going off the record.</p> <p>20 (A recess was taken from 2:10 p.m. to</p> <p>21 2:29 p.m.)</p> <p>22 THE VIDEOGRAPHER: The time is 2:28 p.m. We</p> <p>23 are back on the record.</p> <p>24 BY MR. SABA:</p> <p>25 Q. Ms. Williams, referring to the second</p>

<p>Page 120</p> <p>1 Essential Leadership Behaviors, Driving Execution, do</p> <p>2 you have any objective information or data indicating</p> <p>3 that as of September 22, 2020, Tim Spence was superior</p> <p>4 to or better than Phil McHugh with respect to driving</p> <p>5 execution?</p> <p>6 MR. CIOFFI: Counsel, what document are you</p> <p>7 looking? What exhibit?</p> <p>8 MR. SABA: We are on Exhibit 11, Fifth Third</p> <p>9 McHugh 001015.</p> <p>10 THE WITNESS: Could you repeat the question,</p> <p>11 please?</p> <p>12 MR. SABA: Sure.</p> <p>13 BY MR. SABA:</p> <p>14 Q. Do you have the page?</p> <p>15 A. I do.</p> <p>16 Q. Referring to the second Essential Leadership</p> <p>17 Behaviors Driving Execution, do you have any objective</p> <p>18 information or data indicating that as of September 22,</p> <p>19 2020, Tim Spence was superior to or better than Phil</p> <p>20 McHugh with respect to driving execution?</p> <p>21 A. Yes. I would say that he very successfully</p> <p>22 initiated and pleaded -- with obviously the help of a</p> <p>23 larger team -- the MB Financial transaction, which has</p> <p>24 proven very beneficial. It's a very large transaction</p> <p>25 and the size of that transaction necessarily made it</p>	<p>Page 122</p> <p>1 Tim as the strategy officer because they believed so</p> <p>2 strongly in his strategic skills and believed so</p> <p>3 strongly that if he had aligned himself with Fifth Third</p> <p>4 Bank, it must be a strong bank that they themselves</p> <p>5 would like to be aligned with, and that has proven to be</p> <p>6 the case.</p> <p>7 Q. Looking at the bullet points under Driving</p> <p>8 Execution, it does not talk about mergers and</p> <p>9 acquisitions, it talks about "Maintaining Fifth Third</p> <p>10 Bank's regulatory standing requires management of the</p> <p>11 core business to be conducted within a disciplined</p> <p>12 framework."</p> <p>13 Do you see that?</p> <p>14 A. I do, yes.</p> <p>15 Q. What objective evidence do you have that</p> <p>16 Mr. Spence was better at managing the core business to</p> <p>17 be conducted within a disciplined framework than</p> <p>18 Mr. McHugh?</p> <p>19 A. I don't know what objective evidence I can</p> <p>20 point to other than the fact that the board believed</p> <p>21 that Mr. Spence's judgment was quite excellent. I'm not</p> <p>22 quite sure what objective evidence you're looking for.</p> <p>23 I don't have a good answer for that.</p> <p>24 Q. In the third bullet point of driving execution</p> <p>25 it says, "Given the likelihood of a protracted economic</p>
<p>Page 121</p> <p>1 more complex. So that is one item.</p> <p>2 He also completed several Fintech, smaller</p> <p>3 Fintech acquisitions, and so I would say that in terms</p> <p>4 of driving execution, he achieved some major milestones,</p> <p>5 more significant in the opinion of the board than any of</p> <p>6 the projects that Phil McHugh was working on.</p> <p>7 Q. And when you say that, which -- which projects</p> <p>8 that Phil McHugh was working on were less significant</p> <p>9 than Mr. Spence's?</p> <p>10 A. Well, the small acquisitions that you</p> <p>11 referenced earlier. They were acquisitions, but they</p> <p>12 were minor compared to the size of the MB acquisition.</p> <p>13 Q. What other acquisitions was Mr. McHugh</p> <p>14 involved in other than the two I referenced?</p> <p>15 A. I'm not completely familiar.</p> <p>16 Q. Do you know what Mr. McHugh's role was with</p> <p>17 respect to the MB Financial transaction?</p> <p>18 A. I'm certain he was involved, but I don't</p> <p>19 recall.</p> <p>20 Q. You don't know how significant his role was?</p> <p>21 A. No. I know that he did not initiate it. That</p> <p>22 was initiated by Tim Spence, and the reason we were</p> <p>23 chosen by the MB team, in addition to having a good</p> <p>24 financial offer, was that they believed that Tim --</p> <p>25 Tim's involvement, they wanted to join a bank that had</p>	<p>Page 123</p> <p>1 recovery, the CEO will need to be particularly adept at</p> <p>2 optimizing the bank's success through the economic</p> <p>3 cycle, effectively balancing quarterly results while</p> <p>4 maintaining focus and investment in Fifth Third Bank's</p> <p>5 longer-term success."</p> <p>6 What evidence do you have that historically</p> <p>7 Mr. Spence was better at balancing quarterly results</p> <p>8 while maintaining focus and investment in Fifth Third</p> <p>9 Bank's longer-term success than Phil McHugh?</p> <p>10 A. He was more strategic. He was driving a</p> <p>11 long-term success. He had visions for different</p> <p>12 Fintechs we could purchase, some of which we have</p> <p>13 purchased, that have been very successful. So he was</p> <p>14 very focused on the future. In fact, even the report</p> <p>15 you provided said, you know, he thinks -- I'm trying to</p> <p>16 think. There was a particular comment in here by his</p> <p>17 peers saying he is "a forward-thinking, open to new</p> <p>18 ideas, outside the box, creative idea generator who</p> <p>19 capably puts structure into those ideas and has the</p> <p>20 potential to be a visionary."</p> <p>21 So when you talk about longer-term success,</p> <p>22 Tim was deemed by RHR and the board, the entire board,</p> <p>23 to be a visionary, and we never saw that skill in Phil</p> <p>24 McHugh.</p> <p>25 Q. What does that report say about Mr. McHugh?</p>

<p>Page 124</p> <p>1 A. This report only covers Mr. Spence.</p> <p>2 Q. So it says nothing about Mr. McHugh?</p> <p>3 A. That's correct.</p> <p>4 Q. Okay.</p> <p>5 A. And the reason it doesn't is that we had had</p> <p>6 multiple years to witness Mr. McHugh in his various</p> <p>7 positions and didn't feel that he would have the</p> <p>8 necessary skills to be the president of Fifth Third, so</p> <p>9 we saw no need to have an RHR assessment because the</p> <p>10 board would not have selected him. The board's paid for</p> <p>11 their business judgment. We've got 500 years, 400 years</p> <p>12 of business judgment on the board, witnessing people,</p> <p>13 observing people, judging people -- judging is the wrong</p> <p>14 word -- evaluating people.</p> <p>15 And in the assessment of the board, Phil did</p> <p>16 not have the capabilities to be the CEO, which is why we</p> <p>17 did not have him do the -- an RHR assessment. Tim did</p> <p>18 have the capability, in our view, to be the next CEO, so</p> <p>19 we had the RHR assessment done and it validated many of</p> <p>20 our beliefs.</p> <p>21 Q. Going back to the third bullet point, with</p> <p>22 respect to historically balancing quarterly results, did</p> <p>23 you ever compare Mr. McHugh's quarterly results to</p> <p>24 Mr. Spence's quarterly results to see who more</p> <p>25 effectively balanced those?</p>	<p>Page 126</p> <p>1 out and get that talent. And I didn't -- the board</p> <p>2 didn't see the same talent development under Mr. McHugh.</p> <p>3 So Tim's team, particularly when you think about the new</p> <p>4 head of strategy, Ben Hoffman, and the head of -- at one</p> <p>5 point the head of digital, Melissa Stevens, this was</p> <p>6 extraordinary talent that came to Fifth Third as a</p> <p>7 result of Tim's leadership.</p> <p>8 So, you know, they brought -- again, they</p> <p>9 brought skills to the bank that we didn't have before,</p> <p>10 and so, you know, we determined that he had the ability</p> <p>11 to lead teams.</p> <p>12 Q. You mentioned Ben Hoffman and Melissa Stevens</p> <p>13 are the talent that Tim Spence brought in, correct?</p> <p>14 A. Among the talent.</p> <p>15 Q. Can you identify any others?</p> <p>16 A. I know -- well, we have recently made in the</p> <p>17 last few years a couple of acquisitions. Provide is one</p> <p>18 and there's another one whose name I just blanked on,</p> <p>19 but they also brought talent into the -- into the</p> <p>20 overall organization that may eventually some day evolve</p> <p>21 into talent within the bank. Right now they're sitting</p> <p>22 in their Fintechs running those, but there may be talent</p> <p>23 that we bring from there into the bank. So it's a</p> <p>24 different brand of talent, but it's in the sense that</p> <p>25 these are oftentimes Fintech talent that we did not</p>
<p>Page 125</p> <p>1 A. No, we did not.</p> <p>2 Q. So you have no idea who was more effective at</p> <p>3 balancing their quarterly results?</p> <p>4 MR. CIOFFI: Objection. Mischaracterizes her</p> <p>5 testimony as argumentative. You may answer.</p> <p>6 THE WITNESS: You know, quarterly results are</p> <p>7 good, we are really looking for a long-term leader.</p> <p>8 So Phil's may have been fine, I don't know the</p> <p>9 answer to that. Tim's may have been fine, I don't</p> <p>10 know the answer to that. We were not necessarily</p> <p>11 looking at quarterly results. We wanted a leader</p> <p>12 for the future. And clearly, we believed Tim was</p> <p>13 by far and away the best leader for the future of</p> <p>14 the company.</p> <p>15 BY MR. SABA:</p> <p>16 Q. The next characteristic is -- listed is</p> <p>17 Leading Teams. What objective information or data do</p> <p>18 you -- excuse me, strike that.</p> <p>19 Do you have any objective information or data</p> <p>20 indicating that as of September 22, 2020, Tim Spence was</p> <p>21 superior to or better than Phil McHugh with respect to</p> <p>22 leading teams?</p> <p>23 A. I can tell you that Tim recruited some</p> <p>24 extraordinary outside talent that I doubt that we would</p> <p>25 have had without Tim's leadership and his ability to go</p>	<p>Page 127</p> <p>1 develop internally but, that will help us, we believe,</p> <p>2 the board believes, moving forward.</p> <p>3 Q. When did Ben Hoffman come in?</p> <p>4 A. I don't recall exactly.</p> <p>5 Q. What about Melissa Stevens?</p> <p>6 A. I don't recall exactly, but I know that Tim</p> <p>7 hired them both.</p> <p>8 Q. And when did the Provide situation occur?</p> <p>9 A. I think it was '21 or maybe '22. I think it</p> <p>10 was '22.</p> <p>11 Q. So it would have been after this point in</p> <p>12 time?</p> <p>13 A. That's correct.</p> <p>14 Q. And what talent did Mr. McHugh bring in?</p> <p>15 A. I don't know the answer to that.</p> <p>16 Q. Did you ever look into it?</p> <p>17 A. If he had brought in talent, he presumably</p> <p>18 would have introduced them to the board, but I just</p> <p>19 don't recall who it might have been.</p> <p>20 Q. The next category is Cultivating Networks. Do</p> <p>21 you have any objective information or data indicating</p> <p>22 that as of September 22, 2020, Tim Spence was superior</p> <p>23 to or better than Phil McHugh with respect to</p> <p>24 cultivating networks?</p> <p>25 A. Well, it talks about the relationship with the</p>

<p style="text-align: right;">Page 128</p> <p>1 regulators and the need for the CEO to maintain and</p> <p>2 consolidate that, and I believe Tim has the ability to</p> <p>3 do that. It talks about the bank's relationship with</p> <p>4 its communities, and I know that Tim has been involved</p> <p>5 in the Cincinnati community and talks about M&A</p> <p>6 opportunities. And I was positive that Tim's extensive</p> <p>7 network among other bank presidents and CEOs, as well as</p> <p>8 in the financial community were much more significant</p> <p>9 and broader and deeper than Phil McHugh's networks</p> <p>10 within those specific communities, specifically the</p> <p>11 investment banking community, the community of peers,</p> <p>12 CEOs, and some of the legislative community. It was</p> <p>13 just Tim objectively had much broader networks of</p> <p>14 outside contacts in areas that the bank wanted more --</p> <p>15 more exposure to. The Fintech community, the</p> <p>16 external -- the peer bank community. And the peer bank</p> <p>17 community, I think, again, is the reason that we were</p> <p>18 able to get the MB transaction. So, yes, there is</p> <p>19 objective evidence that Tim's networks were broader and</p> <p>20 deeper than Phil McHugh's, was the view of the board.</p> <p>21 Q. And what were you aware of with respect to</p> <p>22 Phil McHugh's networks in the community?</p> <p>23 A. He had some -- I think in the talent review it</p> <p>24 indicated he had some involvement with some</p> <p>25 not-for-profits here in Cincinnati.</p>	<p style="text-align: right;">Page 130</p> <p>1 BY MR. SABA:</p> <p>2 Q. The strong Rolodex, the list of contacts</p> <p>3 you're referring to, have you ever seen this list of</p> <p>4 contacts?</p> <p>5 A. I have not seen a list per se, but when he has</p> <p>6 referred to people with whom he has spoken about various</p> <p>7 and sundry topics, it's clear to me as well as the rest</p> <p>8 of the board that he has a very strong network of</p> <p>9 contacts throughout the financial industry and</p> <p>10 throughout the Fintech industry, with the venture</p> <p>11 capital industry, you know, a lot of contacts that</p> <p>12 Mr. McHugh simply didn't have.</p> <p>13 Q. Have you done anything to validate the list of</p> <p>14 contacts in Mr. Spence's Rolodex?</p> <p>15 A. I have not audited his list of contacts. That</p> <p>16 said, again, he spent nine years in consulting, had a</p> <p>17 very prominent role at Oliver Wyman, he's a partner,</p> <p>18 which is a -- which is the -- probably the premier bank</p> <p>19 consulting group in the country. He spent nine years</p> <p>20 traveling the country and the world working with banks.</p> <p>21 So I have no doubt that his list of contacts is</p> <p>22 extensive.</p> <p>23 Q. But you've done nothing to validate it</p> <p>24 yourself?</p> <p>25 A. The mere fact that he was made a partner of</p>
<p style="text-align: right;">Page 129</p> <p>1 Q. And you were aware that with respect to Tim</p> <p>2 Spence, involvement in the community was not a strength</p> <p>3 for him, in fact, it was a focus area he needed to work</p> <p>4 on, correct?</p> <p>5 A. Everybody has focus areas they need to work</p> <p>6 on, so that wouldn't necessarily, you know, the fact</p> <p>7 that he had something to work on is fine. Everybody has</p> <p>8 that. But his networks outside of Cincinnati were</p> <p>9 extensive, and those networks were particularly</p> <p>10 important to us.</p> <p>11 Q. And which networks were those specifically?</p> <p>12 MR. CIOFFI: Objection. Asked and answered.</p> <p>13 Beginning this morning, but --</p> <p>14 THE WITNESS: The networks of peer bank --</p> <p>15 peer bank CEOs, other bank CEOs, other consultants,</p> <p>16 other, you know, his contact list. He brought a</p> <p>17 very strong, as I said earlier today, a very strong</p> <p>18 Rolodex of contacts to Fifth Third, many of which I</p> <p>19 don't know that we had those contacts internally</p> <p>20 which is why we hired Tim. We wanted to increase</p> <p>21 our focus on strategy and strategic direction, and</p> <p>22 Tim had the contacts within the banking community</p> <p>23 and the Fintech community through his work at</p> <p>24 Oliver Wyman to help the banks -- the bank have a</p> <p>25 broader network of contacts within the industry.</p>	<p style="text-align: right;">Page 131</p> <p>1 Oliver Wyman was sufficient validation in my view. They</p> <p>2 would not have made him a partner if he didn't have that</p> <p>3 type of network.</p> <p>4 Q. That's your assumption?</p> <p>5 MR. CIOFFI: Objection. That's her answer.</p> <p>6 Counsel, you're drifting in to argumentation, both</p> <p>7 in terms of the tone of your voice and nature of</p> <p>8 your questions.</p> <p>9 MR. SABA: Go ahead. You can answer.</p> <p>10 MR. CIOFFI: You're entitled to an answer, but</p> <p>11 not the answer you want.</p> <p>12 MR. SABA: Go ahead.</p> <p>13 THE WITNESS: Could you repeat your question?</p> <p>14 MR. SABA: Yeah.</p> <p>15 BY MR. SABA:</p> <p>16 Q. I'm saying that's your assumption, that they</p> <p>17 made him a partner at Oliver Wyman because of his</p> <p>18 contacts?</p> <p>19 A. Well, I can't think of any other reason they</p> <p>20 would make him partner if he didn't -- if he hadn't</p> <p>21 developed contacts and was bringing in business. That's</p> <p>22 how you get to be a partner in consulting businesses, is</p> <p>23 my opinion, and he did -- you know, he was able to open</p> <p>24 doors, certainly.</p> <p>25 Again, I'll go back to MB Financial. He was</p>

<p>Page 132</p> <p>1 able to open doors there, and there were other M&A</p> <p>2 transactions that we looked at and ultimately did not</p> <p>3 pursue where it was clear to us that he was on a</p> <p>4 first-name basis with some other CEOs in the banking</p> <p>5 industry. So he has extensive contacts, I am quite</p> <p>6 confident of that.</p> <p>7 Q. What have you done to examine Mr. McHugh's</p> <p>8 contacts?</p> <p>9 A. When I look at Mr. McHugh's background, it was</p> <p>10 clear to me that he was focused primarily, through most</p> <p>11 of his career, in the Cincinnati and Kentucky areas, and</p> <p>12 he has never evidenced any knowledge of having extensive</p> <p>13 contacts with any other bank CEOs or the external</p> <p>14 financial community such as investment bankers or</p> <p>15 investment analysts. I've never heard him comment about</p> <p>16 that or talk about that or frankly even mention it.</p> <p>17 Q. Have you ever asked him about it?</p> <p>18 A. No, but he has also never offered any</p> <p>19 information to that -- to that. He has never referenced</p> <p>20 any of his own capabilities in that area.</p> <p>21 Q. Did the board ever ask him about those</p> <p>22 capabilities?</p> <p>23 A. I think the board didn't necessarily see the</p> <p>24 need to ask him about those capabilities because the</p> <p>25 board never viewed him as a potential president --</p>	<p>Page 134</p> <p>1 entrepreneur, based again on ten years of observing him.</p> <p>2 We never saw the soul and energy of an entrepreneur in</p> <p>3 Phil McHugh during any of his board presentations. He</p> <p>4 came across as very, very cautious of answering</p> <p>5 questions. He read his presentations to the board. He</p> <p>6 did not speak to the board in a conversational tone. He</p> <p>7 did not have the soul and energy of an entrepreneur in</p> <p>8 any of the board presentations that we observed.</p> <p>9 Q. Outside the board presentations, do you have</p> <p>10 anything else to indicate anything with respect to</p> <p>11 personal attributes that Mr. Spence was somehow superior</p> <p>12 to or better than Mr. McHugh?</p> <p>13 A. Well --</p> <p>14 MR. CIOFFI: Are you referring to her to any</p> <p>15 of the other bullets you want her to speak about</p> <p>16 or --</p> <p>17 MR. SABA: No, she referenced -- my question</p> <p>18 stands. She referenced the board presentations and</p> <p>19 the soul of an entrepreneur. I'm asking her</p> <p>20 anything else other than the board presentations</p> <p>21 that she saw.</p> <p>22 THE WITNESS: During the board dinners or</p> <p>23 during any of the conversations, he did not</p> <p>24 evidence any particular energy and didn't really</p> <p>25 talk about any adaptability to find new avenues of</p>
<p>Page 133</p> <p>1 potential candidate to be the president or CEO of the</p> <p>2 bank. They believed he had, you know, not the full</p> <p>3 scope of -- not the full scope of characteristics we</p> <p>4 were looking for. In our view and the view of the</p> <p>5 board, he was not a strategic thinker. He was -- did</p> <p>6 not have or did not evidence to the board any particular</p> <p>7 knowledge of Fintech. Could not speak or did not speak</p> <p>8 to the board about any views about the future of digital</p> <p>9 banking or any of the forces that were impacting our --</p> <p>10 and are continuing to impact the banking industry.</p> <p>11 Q. Was Mr. McHugh ever asked to make a</p> <p>12 presentation to the board regarding the future of</p> <p>13 digital banking?</p> <p>14 A. I don't know the answer to that.</p> <p>15 Q. One of the final categories under the CEO</p> <p>16 profile is Personal Attributes. Do you have any</p> <p>17 objective information or data indicating that as of</p> <p>18 September 22, 2020, Tim Spence was superior to or better</p> <p>19 than Phil McHugh with respect to the personal attributes</p> <p>20 needed to be a CEO of Fifth Third Bank?</p> <p>21 A. Well, it says he "needs to be able to manage</p> <p>22 the business with the soul and energy of an</p> <p>23 entrepreneur," which we definitely saw in Phil McHugh</p> <p>24 (sic). He's very energetic. He acts like an</p> <p>25 entrepreneur. It is his -- in his DNA to think like an</p>	<p>Page 135</p> <p>1 growth. It was kind of business as usual, you</p> <p>2 know, blocking and tackling, which is fine. We</p> <p>3 need that, obviously, but that's in order to be a</p> <p>4 leader of a very, very large regional bank, you</p> <p>5 need more than -- many more skills than blocking</p> <p>6 and tackling, and you need to think about new</p> <p>7 avenues of growth. Tim Spence thinks about new</p> <p>8 avenues of growth all the time. We never saw in a</p> <p>9 board presentation or in any board conversations</p> <p>10 that we had with Phil of hard charging desire to</p> <p>11 find new avenues of growth. I'm not saying they</p> <p>12 weren't there, I'm just saying he never evidenced</p> <p>13 that during his presentations to the board.</p> <p>14 BY MR. SABA:</p> <p>15 Q. The board dinners you keep referencing, just</p> <p>16 to -- explain to me how that scenario typically takes</p> <p>17 place. Are all the board members and members of</p> <p>18 management at one table? Are you split into separate</p> <p>19 tables? What is the typical setting for one of these</p> <p>20 board dinners?</p> <p>21 A. We are typically set -- there are -- there's</p> <p>22 usually a cocktail hour. So -- in which you mingle</p> <p>23 around and talk to people, and there are -- sometimes</p> <p>24 the board members are separated into different tables.</p> <p>25 Sometimes it's as many as four or six. Sometimes it's</p>

<p>Page 136</p> <p>1 as few as two. So there was no -- no regular -- no</p> <p>2 typical format. It usually depended on where the board</p> <p>3 dinner was taking place. So it could vary depending on,</p> <p>4 again, the size of the restaurant and the number of</p> <p>5 attendees.</p> <p>6 Q. So you wouldn't necessarily be sitting at</p> <p>7 a table with all the members of the Enterprise</p> <p>8 committee?</p> <p>9 A. Correct.</p> <p>10 Q. At how many of the board dinners over</p> <p>11 the years have you sat at the same table with Phil</p> <p>12 McHugh?</p> <p>13 A. I do not know. I did not keep a scorecard.</p> <p>14 Q. I'm assuming not every time, correct?</p> <p>15 A. Correct, not every time.</p> <p>16 Q. And at how many of the dinners would you sit</p> <p>17 at the same table as Tim Spence?</p> <p>18 A. Again, I did not keep a scorecard. It was not</p> <p>19 every time.</p> <p>20 Q. You had mentioned before that Guy Beaudin was</p> <p>21 hired as a coach for Greg Carmichael after Greg</p> <p>22 Carmichael became CEO; is that correct?</p> <p>23 A. That's correct.</p> <p>24 Q. Is Guy Beaudin also serving as a coach for Tim</p> <p>25 Spence?</p>	<p>Page 138</p> <p>1 A. My understanding is that Phil McHugh was</p> <p>2 offered a different job that paid over \$2 million a</p> <p>3 year. He decided not to accept that job because he</p> <p>4 didn't want to work for Tim Spence and he basically</p> <p>5 quit. He refused to accept his new job, which was,</p> <p>6 again, a very lucrative -- a very lucrative job that he</p> <p>7 chose to walk away from.</p> <p>8 Q. Where did you gain the understanding of that</p> <p>9 information?</p> <p>10 A. From the management of Fifth Third.</p> <p>11 Q. What was the job that was offered to Phil</p> <p>12 McHugh?</p> <p>13 A. I believe it was -- I believe it was wealth.</p> <p>14 It might have been consumer. I've forgotten which, but</p> <p>15 it was a substantial job, paid a lot of money.</p> <p>16 Q. You're not sure what the duties were?</p> <p>17 A. I just don't recall. It was either wealth or</p> <p>18 consumer. It was one of the two. I think it was</p> <p>19 wealth, but I'm not 100 percent positive. It might have</p> <p>20 been consumer.</p> <p>21 Q. How much are you paid a year as a board</p> <p>22 member?</p> <p>23 A. Oh, golly. I've actually forgotten. I should</p> <p>24 know. I just don't recall. It's in the proxy. I'm</p> <p>25 sorry. I don't recall the number.</p>
<p>Page 137</p> <p>1 A. I don't know the answer to that.</p> <p>2 Q. Do you know how much Guy Beaudin was paid to</p> <p>3 serve as a coach for Greg Carmichael?</p> <p>4 A. I do not know.</p> <p>5 Q. Do you know how much RHR was paid to do their</p> <p>6 assessment of Tim Spence?</p> <p>7 A. I do not know.</p> <p>8 Q. Who would?</p> <p>9 A. I may have known at the time but I have long</p> <p>10 since forgotten.</p> <p>11 Q. Who would know that?</p> <p>12 A. Probably Bob Shaffer and Mike McCallister</p> <p>13 might have known.</p> <p>14 Q. I believe you testified earlier that you would</p> <p>15 keep notes in Diligent; is that correct?</p> <p>16 A. Yes. At board meetings, correct. Not in</p> <p>17 executive session but during the board meetings.</p> <p>18 Q. And are those notes still available on</p> <p>19 Diligent?</p> <p>20 A. I do not know.</p> <p>21 Q. Who would know?</p> <p>22 A. I don't know.</p> <p>23 Q. What's your understanding of the events</p> <p>24 leading up to Phil McHugh's departure from Fifth Third</p> <p>25 Bank?</p>	<p>Page 139</p> <p>1 Q. Do you recall the additional amount you</p> <p>2 received to be lead director?</p> <p>3 A. I think --</p> <p>4 MR. CIOFFI: Objection. It's a public record.</p> <p>5 You're wasting time, counsel.</p> <p>6 THE WITNESS: I don't recall. It was an</p> <p>7 increment over the base salary, but I just don't</p> <p>8 recall.</p> <p>9 MR. SABA: We can go off the record? Let me</p> <p>10 see what additional questions I have.</p> <p>11 THE VIDEOGRAPHER: The time is 2:59 p.m.</p> <p>12 We're going off the record.</p> <p>13 (A recess was taken from 2:59 p.m. to</p> <p>14 3:10 p.m.)</p> <p>15 THE VIDEOGRAPHER: The time is 3:10 p.m. We</p> <p>16 are back on the record.</p> <p>17 MR. SABA: That's all the questions we have at</p> <p>18 this time. Obviously there's pending discovery</p> <p>19 issues regarding additional documents we've</p> <p>20 requested. We'd hold the deposition open for that</p> <p>21 purpose to the extent of new information revealed</p> <p>22 by those documents.</p> <p>23 MR. CIOFFI: We understand you're attempting</p> <p>24 to reserve rights. We don't agree that you have</p> <p>25 any, but the court will determine that at some</p>

<p>1 point in time.</p> <p>2 EXAMINATION</p> <p>3 BY MR. CIOFFI:</p> <p>4 Q. Ms. Williams, I have a few questions for you.</p> <p>5 A. Okay.</p> <p>6 Q. You testified earlier that you joined the</p> <p>7 board in approximately 2006; is that correct?</p> <p>8 A. December -- I was elected either December 2008</p> <p>9 or January of 2009.</p> <p>10 Q. From the time you joined the board until</p> <p>11 September of 2020, approximately how many opportunities</p> <p>12 did you have to discuss issues confronting the banking</p> <p>13 industry with both Tim Spence and Phil McHugh?</p> <p>14 MR. SABA: Objection. Go ahead. You can</p> <p>15 answer.</p> <p>16 THE WITNESS: Well, in the case of Phil</p> <p>17 McHugh, I believe he attended very nearly every</p> <p>18 board meeting and dinner. So from 2009 to 2020</p> <p>19 would be 11 years. We had six -- five to six to</p> <p>20 seven board meetings a year, so let's say -- let's</p> <p>21 say six. And then six board dinners. So that's</p> <p>22 12. Six board meetings, each were two days or one</p> <p>23 day, six, 12, so 12 times 11 years so, what, 120 --</p> <p>24 let's say 100. 100 interactions with Phil McHugh</p> <p>25 over a roughly 11-year period.</p>	<p>Page 140</p> <p>1 A. Yes. He could talk quite effectively about</p> <p>2 financial regulations, some of which was pending and</p> <p>3 some of which had just gone into effect. He was</p> <p>4 knowledgeable about bank regulation, extremely</p> <p>5 knowledgeable about bank regulation and extremely</p> <p>6 articulate about not only what the regulations were that</p> <p>7 were -- had been passed, but also regulations that were</p> <p>8 under consideration and the impact that those may have</p> <p>9 on the bank. And he could also talk about Fintech and</p> <p>10 the impact that Fintech was having on basically eating</p> <p>11 into the market share of traditional banks.</p> <p>12 Q. You've used that term several times today,</p> <p>13 Fintech. What do you mean by that?</p> <p>14 A. I mean financial companies outside of the</p> <p>15 traditional banking companies who are developing tech</p> <p>16 companies outside the traditional banking industry that</p> <p>17 are developing tools and processes and applications for</p> <p>18 consumers to use to basically circumvent the financial</p> <p>19 industry. So I would say something like Venmo or Glint,</p> <p>20 or some of those -- some of those tools that have</p> <p>21 recently come into the financial world.</p> <p>22 Q. In these interactions over ten years, did --</p> <p>23 similarly did Phil McHugh have an opportunity to</p> <p>24 articulate and otherwise demonstrate his experience or</p> <p>25 knowledge about the regulatory environment impacting the</p>
<p>Page 141</p> <p>1 BY MR. CIOFFI:</p> <p>2 Q. Did you have the same number of interactions</p> <p>3 more or less with Tim Spence?</p> <p>4 A. I would say starting with his presentation at</p> <p>5 the board in 2010, I would say we had a lot of</p> <p>6 interactions with Tim. Whether it was as many as with</p> <p>7 Phil, hard to say, but he did present his strategy to</p> <p>8 the board. Those were a little bit longer. So probably</p> <p>9 about the same, maybe a tiny bit fewer.</p> <p>10 Q. These interactions -- and I think you</p> <p>11 described them as board meetings, board lunches, board</p> <p>12 dinners -- during those interactions, what kinds of</p> <p>13 topics were discussed?</p> <p>14 A. The results of the businesses were discussed.</p> <p>15 The -- we usually had an update on the legal situation</p> <p>16 of the bank. We had an update on the regulatory</p> <p>17 situation of the bank. We had an update on mergers and</p> <p>18 acquisitions and potential investments we were making.</p> <p>19 We had an update on investor relations. We had an</p> <p>20 update on basically how the business was doing in each</p> <p>21 of the major business lines.</p> <p>22 Q. During these interactions, did Tim Spence have</p> <p>23 an opportunity to articulate or otherwise demonstrate</p> <p>24 his knowledge and experience with respect to the</p> <p>25 regulatory environment impacting the banking industry?</p>	<p>Page 143</p> <p>1 banking industry?</p> <p>2 MR. SABA: Objection. Go ahead. You can</p> <p>3 answer.</p> <p>4 THE WITNESS: Phil McHugh had many</p> <p>5 opportunities to present to the board. I did not</p> <p>6 hear from Phil McHugh any particular knowledge or</p> <p>7 comments about regulatory or Fintech issues. His</p> <p>8 reports to the board, as I said earlier in the day,</p> <p>9 he tended to read his reports to the board and</p> <p>10 never really engaged in an in-depth conversation</p> <p>11 with the board about any of those issues that I can</p> <p>12 recall.</p> <p>13 BY MR. CIOFFI:</p> <p>14 Q. Based on his interactions, did you come to a</p> <p>15 conclusion -- in the exercise of your independent</p> <p>16 business judgment -- as to Tim's knowledge and</p> <p>17 experience with respect to regulatory environment</p> <p>18 affecting the banking industry and Fintech?</p> <p>19 A. Yes.</p> <p>20 MR. SABA: Objection. Go ahead, you can</p> <p>21 answer.</p> <p>22 THE WITNESS: Yes. I believe Tim had an</p> <p>23 extraordinary grasp of the future of banking</p> <p>24 through his consulting days, but as well as through</p> <p>25 his ongoing education and contacts with various</p>

<p>1 people in the financial world. And he certainly 2 has kept up with the Fintech landscape and is 3 actively -- pursues and can speak to various 4 Fintech players who are out there and who may 5 ultimately be disrupters -- further disrupters to 6 the banking industry.</p> <p>7 BY MR. CIOFFI:</p> <p>8 Q. How would you compare, through these 9 interactions that you observed, Tim Spence's knowledge 10 of the regulatory environment and also the competitive 11 threat from Fintech businesses to Phil McHugh's 12 knowledge in those areas?</p> <p>13 A. Well, as someone in the RHR document 14 commented, Tim really is a visionary. He understands 15 the financial world. He understands the banking world. 16 He understands what the trends are that are coming. He 17 is very well-read. He reads a lot of journals and 18 periodicals and keeps up-to-date with what's really 19 cutting edge financial issues and financial companies 20 and tools. There has never been any time I've ever 21 asked him a question about a particular product or a 22 particular -- a particular tool that I may have read 23 about in the newspaper or read about somewhere, Tim 24 always had, to my mind, a very in-depth and detailed 25 understanding of the product and issue.</p>	Page 144	<p>1 president. Tim was far superior in all of the key 2 areas, in knowledge of the banking industry, in contacts 3 in the banking industry, in communication skills, we 4 thought he was far superior, and in digital banking, 5 there was absolutely no comparison in their skill sets, 6 and those are the skills that we think are really 7 critical to leading the bank forward. He also had 8 strong leadership skills and those are critical as well.</p> <p>9 Q. Same question, what conclusions were you able 10 to draw, if any, through these interactions with both 11 Tim Spence and Phil McHugh about their knowledge of the 12 competitive landscape affecting the banking industry?</p> <p>13 MR. SABA: Objection. Go ahead, you can 14 answer.</p> <p>15 THE WITNESS: I -- to -- I believe all of the 16 board members would say there was no comparison in 17 the knowledge base, the competitive landscape of 18 the banking industry. Tim spends his knowledge 19 based on his many years at Oliver Wyman and the 20 fact that he was a partner at Oliver Wyman gave him 21 an in-depth understanding and knowledge of the 22 competitive landscape and, in particular, he had a 23 good knowledge of the CEOs in the industry, what 24 many of those CEOs were thinking, how they were -- 25 what plans they were making for the future of the</p>
<p>1 Q. And how would you compare that knowledge 2 demonstrated and articulated by Tim Spence to Phil 3 McHugh's?</p> <p>4 MR. SABA: Objection. Go ahead. You can 5 answer.</p> <p>6 THE WITNESS: As I said earlier, I always had 7 the impression that Phil McHugh was a little 8 guarded in his conversations with the board. He 9 would answer a question very narrowly. He would 10 read his board presentations to the board, and so 11 his performance led me to believe that he did not 12 have nearly the breadth of knowledge about a number 13 of areas that are critical to the future of the 14 bank. He just -- he didn't display that knowledge.</p> <p>15 BY MR. CIOFFI:</p> <p>16 Q. Did you discuss your observations in that 17 regard with the other board members?</p> <p>18 A. Yes. And I believe the other board members 19 felt the same way. I believe to a person all of the 20 board members felt that when we selected Tim to be the 21 next president, that he was by far the superior 22 candidate to Phil McHugh, which is why we felt we had 23 such a good candidate, we did not -- did not see the 24 need to have Phil assessed by RHR because he was never 25 really -- he was never a candidate to be the next</p>	Page 145	<p>1 bank. He was on a first-name basis with, you know, 2 I believe more than one major bank -- major bank 3 CEO, and that knowledge was -- that knowledge and 4 those contacts and that network were invaluable.</p> <p>5 As I said, he is the -- he is one of the 6 primary reasons that the MB Financial team chose 7 Fifth Third as the bank they would want to join, 8 the bank they wanted to join, the bank they did 9 join. And that's been a very lucrative, successful 10 transaction for Fifth Third and its shareholders.</p> <p>11 BY MR. CIOFFI:</p> <p>12 Q. Same question with respect to your 13 observations about Tim Spence and Phil McHugh in these 14 interactions over a ten-plus year period with respect to 15 their knowledge of Wall Street and capital markets?</p> <p>16 MR. SABA: Objection. Go ahead. You can 17 answer.</p> <p>18 THE WITNESS: I never saw -- let me start 19 over.</p> <p>20 Tim Spence had contacts on Wall Street in the 21 investment houses and was able to talk to those 22 contacts. He also had contacts within the banks, 23 in the investment banking areas, and so he has a 24 facility and a comfort with Wall Street, both on 25 the banking side and I believe on the analyst side</p>

<p>Page 148</p> <p>1 that I don't believe Phil had. I never saw any</p> <p>2 evidence that he had any contacts with Wall Street.</p> <p>3 He may have. He never demonstrated that to the</p> <p>4 bank board -- to the board.</p> <p>5 BY MR. CIOFFI:</p> <p>6 Q. Again, over this ten-year period and the</p> <p>7 hundred-plus opportunities to observe both Tim Spence</p> <p>8 and Phil McHugh with respect to mergers and</p> <p>9 acquisitions, how would you compare their knowledge of</p> <p>10 mergers and acquisitions as it impacted the banking</p> <p>11 industry?</p> <p>12 A. Well, Tim --</p> <p>13 MR. SABA: Objection. But you can answer.</p> <p>14 THE WITNESS: Tim had a remarkable ability to</p> <p>15 articulate and describe the competitive landscape</p> <p>16 in the banking industry and he did that during our</p> <p>17 September board meetings. And he could tell you</p> <p>18 what the strengths and weaknesses were of all of</p> <p>19 our key competitors, and he could walk through in</p> <p>20 detail what he believed those competitors were</p> <p>21 going to do, which competitors might be actionable</p> <p>22 by us for future growth, actionable in the sense of</p> <p>23 a potential merger candidate or acquisition</p> <p>24 candidate, and he had -- the fascinating thing</p> <p>25 about Tim Spence is he could do much of that</p>	<p>Page 150</p> <p>1 there were some details, but whenever we asked about the</p> <p>2 details, I didn't believe that there was a very in-depth</p> <p>3 answer. So there were some details in his presentation.</p> <p>4 Again, he tended to read the presentations to the board</p> <p>5 which was -- the board didn't appreciate because the</p> <p>6 board had already read them and nobody likes to be read</p> <p>7 to, but when we asked questions about his presentations,</p> <p>8 his answers seemed superficial and guarded.</p> <p>9 Q. What objectively did you take away from the</p> <p>10 fact that Phil McHugh always read his presentations in</p> <p>11 terms of his qualifications?</p> <p>12 A. Could you repeat the question?</p> <p>13 Q. Yeah. What assessment did you make from the</p> <p>14 fact that Tim -- or that Phil McHugh always read his</p> <p>15 presentations with respect to the depth and extent of</p> <p>16 the knowledge being conveyed?</p> <p>17 A. You know, I took away from that that his</p> <p>18 knowledge was -- that he was guarded, that he was</p> <p>19 somewhat superficial in how he presented information,</p> <p>20 that he was afraid basically to answer the questions,</p> <p>21 and I never understood that. Very guarded, very -- very</p> <p>22 guarded and superficial.</p> <p>23 Q. Mr. Saba asked you some questions about Phil</p> <p>24 McHugh's involvement in the acquisition of wealth</p> <p>25 management companies; do you recall that?</p>
<p>Page 149</p> <p>1 without ever looking at a note. He had that all in</p> <p>2 his brain, and he was very, very knowledgeable and</p> <p>3 very articulate and he could answer every question</p> <p>4 about any bank's strategy or at least any question</p> <p>5 that the board asked him, he had an answer at his</p> <p>6 fingertips. He was extremely articulate and</p> <p>7 extremely well-spoken and extremely knowledgeable</p> <p>8 about those particular topics and the bank</p> <p>9 merger -- the bank competitive landscape and the</p> <p>10 merger market. We never saw any of that from Phil</p> <p>11 McHugh.</p> <p>12 BY MR. CIOFFI:</p> <p>13 Q. You mentioned in your testimony earlier in</p> <p>14 response to one of Mr. Saba's questions about the lack</p> <p>15 of specificity in a presentation by Phil McHugh in June</p> <p>16 of 2020. Do you remember that testimony?</p> <p>17 A. I do.</p> <p>18 Q. What did you observe with respect to the depth</p> <p>19 and specificity of Phil McHugh's other presentations to</p> <p>20 the board over this ten-year period?</p> <p>21 A. He was quite specific. His --</p> <p>22 Q. I'm asking you Phil McHugh.</p> <p>23 A. Oh, Phil McHugh, I'm sorry. I thought you</p> <p>24 said Tim Spence. I apologize. I would say in general</p> <p>25 most of his presentations were fairly high level and</p>	<p>Page 151</p> <p>1 A. I recall that.</p> <p>2 Q. What was the size of these acquisitions in</p> <p>3 relationship to the gross revenues of the bank?</p> <p>4 A. Extremely small. I don't recall the exact</p> <p>5 number, but very small. I think some of the teams were</p> <p>6 very small. I don't know the exact numbers.</p> <p>7 Q. Less than some fraction of 1 percent?</p> <p>8 A. In terms of the revenues of the bank, yes, I</p> <p>9 would believe that to be the case.</p> <p>10 Q. How would you compare that knowledge and</p> <p>11 experience to Tim Spence's knowledge and experience with</p> <p>12 mergers and acquisitions?</p> <p>13 MR. SABA: Objection. Go ahead. You can</p> <p>14 answer.</p> <p>15 THE WITNESS: Tim had worked on a number of</p> <p>16 acquisitions while he was at Oliver Wyman advising</p> <p>17 Oliver -- advising his bank clients on potential</p> <p>18 targets and then being involved in the execution</p> <p>19 and the due diligence when those deals,</p> <p>20 transactions were being -- transactions were being</p> <p>21 negotiated and discussed. So I believe Tim</p> <p>22 Spence's knowledge of the M&A landscape was far</p> <p>23 more extensive than Phil McHugh's knowledge.</p> <p>24 BY MR. CIOFFI:</p> <p>25 Q. I'd like to direct your attention to</p>

<p>Page 152</p> <p>1 Exhibit Number 4. Would you look at the first page, 2 next page. Mr. Saba asked you some questions about this 3 as to who prepared this document. Do you recall those 4 questions? 5 A. I recall some of them. 6 Q. Do you recall your answer as who generated 7 this document? 8 A. Someone in the HR department. 9 Q. Did you accept all the information on these 10 documents, similar documents that is marked as Exhibit 4 11 at face value? 12 MR. SABA: Objection. You can answer. 13 THE WITNESS: No. We receive documents, we 14 read them, we discuss them, and we as a board make 15 our own judgments about what we think about those 16 documents, and we don't simply always follow or -- 17 we make our own judgments about them. This is a 18 group of anywhere from 12 to 15 executives, most 19 all are senior executives -- or we even have a 20 senator on the board -- who have years and years 21 and years of judgments evaluating people. 22 And so we take in the information. It's an 23 important source of information, but we don't -- we 24 make our own decisions in terms of how we assess 25 the information.</p>	<p>Page 154</p> <p>1 reason to judgment and reasonable best judgment 2 that Tim Spence was by far and away the succession 3 candidate who was better than any other succession 4 candidate at the bank, and that is why he was 5 ultimately made president. 6 BY MR. CIOFFI: 7 Q. When the board came to that decision and 8 through its discussions about that decision, did anyone 9 on the board discuss age as a factor in that decision? 10 A. No. Age was never a factor in any of our 11 conversations. 12 Q. Did anyone on the board discriminate against 13 Mr. McHugh in any of its decision making concerning 14 succession and the appointment of Tim Spence as 15 president, did any board member discriminate against 16 Mr. McHugh on account of his age? 17 MR. SABA: Objection. Go ahead. You can 18 answer. 19 THE WITNESS: Absolutely not, no. There was 20 no discussion or concern about his age. He was 21 offered a very good job when -- that he chose to 22 turn down. So had we been concerned about his age, 23 there probably wouldn't have been an offer of a 24 very, very large job that paid a lot of money every 25 year.</p>
<p>Page 153</p> <p>1 BY MR. CIOFFI: 2 Q. In that respect, you testified earlier in the 3 day about the board's duty to exercise independent 4 business judgment. Do you remember that testimony? 5 A. I do remember that. It's a very important 6 duty. 7 Q. How did you apply and discharge that duty with 8 respect to information from management like Exhibit 9 Number 4? 10 MR. SABA: Objection. Go ahead. You can 11 answer. 12 THE WITNESS: Well, we read the information. 13 We evaluated the information in the documents and 14 compared in our own minds that information with our 15 own observations and with the discussions that we 16 had among ourselves as board members, and basically 17 reached our own judgments, but did use these 18 documents as helpful and sometimes interesting 19 background information. 20 Again, we had a number of board directors with 21 a lot of years of business experience, and we had a 22 lot of years and interactions with both Phil McHugh 23 and Tim Spence. And we had the ability to evaluate 24 and assess them in the context of choosing Greg 25 Carmichael's next successor, and we came to the</p>	<p>Page 155</p> <p>1 BY MR. CIOFFI: 2 Q. I want to direct your attention to Exhibit 3 Number 13, please. I know you described it a little bit 4 earlier, but, again, what is that document? 5 A. Oh, this document is the summary that was 6 given to the board by RH -- prepared by RHR, their 7 summary of Tim Spence as a potential candidate for the 8 presidency of the bank. 9 Q. Did you and the other board members discuss 10 this assessment? 11 A. Yes, we did. 12 Q. I want to direct your attention to the first 13 page inside the cover page, which is Bates stamped 14 001034; do you see that? 15 A. I do. 16 Q. And it's captioned Executive Summary; do you 17 see that? 18 A. I do. 19 Q. And it says in the first paragraph, "Tim 20 Spence demonstrates a strong fit to the leadership 21 characteristics desired in a chief effective officer at 22 Fifth Third Bank. He is a creative, forward-thinking 23 strategic thinker who balances objective data with his 24 subjective experience to derive innovative solutions to 25 business challenges."</p>

<p>1 Do you see that language?</p> <p>2 A. I do.</p> <p>3 Q. Did you and your fellow independent board</p> <p>4 members discuss those findings?</p> <p>5 A. We discussed the findings and we agreed with</p> <p>6 the findings. We believe that what -- the assessment</p> <p>7 was an accurate and fair assessment of Tim Spence.</p> <p>8 Q. Was that decision on the part of the board</p> <p>9 unanimous?</p> <p>10 A. It was unanimous, and it was developed over a</p> <p>11 long period of time. It was developed over all of the</p> <p>12 interactions that we had with Tim Spence, and we</p> <p>13 believed, as we watched him -- since we had been</p> <p>14 watching him since 2010, he continued to grow in his</p> <p>15 capabilities, and we strongly supported, as a full board</p> <p>16 the -- his election to president because we felt he was</p> <p>17 without a doubt the strongest internal candidate we had,</p> <p>18 and the board to this day continues to feel quite</p> <p>19 confident that we have chosen the right person to be the</p> <p>20 president and chairman -- or excuse me, president and</p> <p>21 CEO of Fifth Third. We are very comfortable with our</p> <p>22 choice.</p> <p>23 Q. The remainder of that first paragraph says,</p> <p>24 "He demonstrates exceptional abilities in dealing with</p> <p>25 complexity and ambiguity and a capacity to exercise the</p>	<p>Page 156</p> <p>Page 158</p> <p>1 unanimous on the part of the board. Not a single board</p> <p>2 member ever called me or communicated in any way, shape,</p> <p>3 or form that they thought a different individual should</p> <p>4 be evaluated. Tim by far and away was the strongest</p> <p>5 candidate and to our mind still is the strongest</p> <p>6 candidate we could have possibly chosen to lead Fifth</p> <p>7 Third.</p> <p>8 Q. The remainder of this executive summary says</p> <p>9 as follows: "As a values-based leader, he cares deeply</p> <p>10 about organizational culture and the well-being of its</p> <p>11 employees. He is admired for his ability to adjust his</p> <p>12 leadership approach based on what is required by the</p> <p>13 individual and the circumstance at hand. He is a</p> <p>14 compelling speaker who projects a passionate message to</p> <p>15 his audience. His diplomatic manner allows him to</p> <p>16 challenge the ideas of others without creating</p> <p>17 defensiveness or resistance, which facilitates his</p> <p>18 ability to gain buy-in to his strategies and objectives.</p> <p>19 He perseveres in the face of difficulties and has</p> <p>20 effective strategies in place to manage the stresses and</p> <p>21 strains inherent in an executive position.</p> <p>22 "As a continuous learner, Tim pushes himself</p> <p>23 to further hone his skills. He is very insightful</p> <p>24 regarding his strengths and weaknesses and remains open</p> <p>25 to feedback and ongoing development."</p>
<p>Page 157</p> <p>1 business levers most material to having an impact on the</p> <p>2 bottom line. He is thoughtful and thorough -- he is a</p> <p>3 thoughtful and thorough decision maker who is</p> <p>4 disciplined and structured in his approach to work. He</p> <p>5 holds himself to high standards of performance but also</p> <p>6 knows when good enough is good enough."</p> <p>7 Did you discuss those findings on the board?</p> <p>8 A. We did discuss those findings, and one of the</p> <p>9 interesting things about Tim Spence, most valuable</p> <p>10 things about Tim Spence, is that given his many years in</p> <p>11 consulting for banks, he understood the operating levers</p> <p>12 necessary to drive the performance of a bank, and</p> <p>13 understood -- understands how a bank makes money, how a</p> <p>14 bank can serve its customers best, how a bank -- what</p> <p>15 the -- what a bank needs to do to survive in a fairly</p> <p>16 rapidly changing legislative and technology-based</p> <p>17 environment, which is what we're in the middle of right</p> <p>18 now. There's a lot of regulation. Regulations are</p> <p>19 changing, and there are a lot of financial technology</p> <p>20 companies, Fintechs, who are anxious to eat into the</p> <p>21 market share of banks. And he understands all of that.</p> <p>22 Q. Was the board's assessment of Tim Smith -- Tim</p> <p>23 Spence with respect to that part of the findings</p> <p>24 unanimous?</p> <p>25 A. Absolutely. The decision to appoint Tim was</p>	<p>Page 159</p> <p>1 Did the board discuss those findings?</p> <p>2 A. We did discuss those findings.</p> <p>3 Q. And what did the board conclude?</p> <p>4 A. Well, the board concluded that that was an</p> <p>5 accurate assessment of Tim Spence. He is an enormously</p> <p>6 compelling speaker, and as I said, when he -- when he</p> <p>7 answers questions -- because he doesn't know what</p> <p>8 questions are coming -- when he answers questions, he</p> <p>9 offers very detailed and very specific answers to the</p> <p>10 questions, which lead people to understand -- I believe,</p> <p>11 in my case certainly and I think it's true of the other</p> <p>12 board members -- that he really had an in-depth</p> <p>13 knowledge of the topics about which he was speaking.</p> <p>14 And he is -- I know that he's a voracious reader based</p> <p>15 on conversations I've had over the years, and he very</p> <p>16 much keeps up-to-date on current events, and can talk</p> <p>17 with great knowledge about current events and in</p> <p>18 particular about current events as it relates to the</p> <p>19 financial industry and the banking industry.</p> <p>20 Q. Based on your observations and interactions</p> <p>21 with Phil McHugh over more than a ten-year period, do</p> <p>22 you have an opinion as to whether he possessed the</p> <p>23 qualifications set forth in this executive summary?</p> <p>24 A. I do not believe he possessed those</p> <p>25 qualifications, nor did the rest of the board.</p>

<p>Page 160</p> <p>1 Q. I was going to ask you, is your opinion about</p> <p>2 Phil McHugh not possessing these qualities something</p> <p>3 that was shared by the board?</p> <p>4 A. Yes. The board did not believe Phil McHugh</p> <p>5 shared these qualities, and that was evidenced by all</p> <p>6 the different presentations we had by Phil McHugh over</p> <p>7 many years as compared to the types of presentations we</p> <p>8 received from Tim Spence, again, over many years.</p> <p>9 Q. Was that view unanimous on the board?</p> <p>10 A. That view was absolutely unanimous on the part</p> <p>11 of the board.</p> <p>12 Q. Tell us again how many independent directors</p> <p>13 are on the board?</p> <p>14 A. Right now there are -- I believe there are 13.</p> <p>15 We have 3 inside directors and 13 independent directors,</p> <p>16 and of those 13 independent directors, most have been</p> <p>17 CEOs -- many have been CEOs. One is a former senator.</p> <p>18 We have a couple of former CFOs. We have people who</p> <p>19 have been in and around the banking world and the</p> <p>20 consulting world and the technology world and the</p> <p>21 government circles for each on average probably 40</p> <p>22 years. So whatever 40 by 13 is. I would have to do</p> <p>23 that math. That's a lot of years of experience.</p> <p>24 Q. You mentioned something over 4 to 500 years of</p> <p>25 business judgment experience --</p>	<p>Page 162</p> <p>1 Q. They're important to your ability to have</p> <p>2 assessed Mr. Spence and Mr. McHugh; isn't that right?</p> <p>3 A. Me and the entire -- the rest of the entire</p> <p>4 board.</p> <p>5 Q. And the entire board; is that right?</p> <p>6 A. That's correct.</p> <p>7 Q. The unanimous board, as you've referred to</p> <p>8 several times, right?</p> <p>9 A. Yes. Uh-huh.</p> <p>10 Q. So I'm trying to understand these interactions</p> <p>11 which you seem to recall in more detail about them. And</p> <p>12 with Mr. McHugh you have -- you're talking about the</p> <p>13 interactions going back to you said 2008; is that right?</p> <p>14 A. That's when I first joined the -- I joined the</p> <p>15 board in either December of 2008 or January of 2009; I</p> <p>16 don't recall.</p> <p>17 Q. Okay.</p> <p>18 A. But 2009 would have been my first board</p> <p>19 meeting.</p> <p>20 Q. Was when the interactions began?</p> <p>21 A. I don't know if that's when the interactions</p> <p>22 began. The interactions went back over a number of</p> <p>23 years. I can't give you the exact date of when they</p> <p>24 began, but --</p> <p>25 Q. When would they have begun because you gave us</p>
<p>Page 161</p> <p>1 A. Yes.</p> <p>2 Q. -- is that correct?</p> <p>3 A. Correct. And we have a fiduciary duty to</p> <p>4 exercise our business judgment. That is the role of the</p> <p>5 board, and that includes setting a strategy and</p> <p>6 selecting the next CEO, and we believe we exercised that</p> <p>7 fiduciary duty and that business judgment when we</p> <p>8 selected Tim Spence as the next president and CEO.</p> <p>9 MR. CIOFFI: I have no further questions.</p> <p>10 MR. SABA: Can we go off the record for a</p> <p>11 minute?</p> <p>12 THE VIDEOGRAPHER: The time is 3:43 p.m.</p> <p>13 We're going off the record.</p> <p>14 (A recess was taken from 3:44 p.m. to</p> <p>15 3:47 p.m.)</p> <p>16 THE VIDEOGRAPHER: The time is 3:47 p.m.</p> <p>17 We're back on the record.</p> <p>18 FURTHER EXAMINATION</p> <p>19 BY MR. SABA:</p> <p>20 Q. Ms. Williams, Mr. Cioffi was asking you about</p> <p>21 what he described as your interactions with Mr. Spence</p> <p>22 and Mr. McHugh, repeated several times going back over</p> <p>23 ten years and that a lot of your opinions are based on</p> <p>24 these interactions, correct?</p> <p>25 A. Yeah, that is correct.</p>	<p>Page 163</p> <p>1 an estimated number based on 11 years?</p> <p>2 A. I did.</p> <p>3 Q. So you came up with some figure of 100?</p> <p>4 A. Yep. I don't know exactly when they began,</p> <p>5 but the -- I think it was a lot of interactions. I</p> <p>6 don't know the exact date they began.</p> <p>7 Q. Okay. Do you recall any of the interactions</p> <p>8 specifically?</p> <p>9 A. You know, I remember various presentations</p> <p>10 over the years. As I said, I recall the June 2020</p> <p>11 presentation perhaps because that's more recent where</p> <p>12 his deck was identical in a number of the sections of</p> <p>13 wording with another executive's deck, which struck me</p> <p>14 as peculiar. I remember various presentations like in</p> <p>15 decks, but I can't give you exact dates.</p> <p>16 Q. Do you recall any of the presentations in 2009</p> <p>17 that Mr. McHugh did?</p> <p>18 A. No, I do not.</p> <p>19 Q. What about 2010?</p> <p>20 A. As I said earlier, I do not know the exact</p> <p>21 dates. There were multiple presentations over many</p> <p>22 years. I cannot give you the exact dates.</p> <p>23 Q. What about 2011?</p> <p>24 MR. CIOFFI: Objection. Asked and answered.</p> <p>25 I mean --</p>

<p>Page 164</p> <p>1 MR. SABA: No, I haven't asked about -- no, I</p> <p>2 haven't asked about 2011.</p> <p>3 MR. CIOFFI: She said she can't remember.</p> <p>4 BY MR. SABA:</p> <p>5 Q. What about 2012?</p> <p>6 MR. CIOFFI: That was ten years ago.</p> <p>7 MR. SABA: She seemed to remember when you</p> <p>8 were asking her. Suddenly she can't remember. So</p> <p>9 I'm trying to find out, these are the only things</p> <p>10 that she has to evaluate him. I want to understand</p> <p>11 when they were and what happened.</p> <p>12 THE WITNESS: Well, in any time that he</p> <p>13 presented to the board between 2009 and 2020, I</p> <p>14 would have observed his interactions and</p> <p>15 presentations.</p> <p>16 BY MR. SABA:</p> <p>17 Q. So between 2009 and let's say 2016, how many</p> <p>18 presentations did Mr. McHugh do to the board?</p> <p>19 A. I don't recall.</p> <p>20 Q. Do you recall any?</p> <p>21 A. I don't -- as I just said, I don't recall how</p> <p>22 many presentations there were.</p> <p>23 Q. Do you recall anything about any of the</p> <p>24 presentations he made between 2009 and 2016?</p> <p>25 A. For the third time, I don't recall.</p>	<p>Page 166</p> <p>1 Q. Oh, can you point that out to me again? I</p> <p>2 didn't see that about communication skills in the talent</p> <p>3 deck. Can you show me where that is, please? And we</p> <p>4 can refer to Exhibit 4.</p> <p>5 MR. CIOFFI: She answered this question,</p> <p>6 Counsel. You're wasting time.</p> <p>7 MR. SABA: No, I think you gave a different</p> <p>8 answer.</p> <p>9 MR. CIOFFI: You're badgering the witness.</p> <p>10 MR. SABA: No, I'm not. You're the one who</p> <p>11 gave the answer. We're having her follow up on</p> <p>12 your answer.</p> <p>13 BY MR. SABA:</p> <p>14 Q. And I will refer you to Fifth Third McHugh</p> <p>15 001132.</p> <p>16 MR. CIOFFI: Which exhibit?</p> <p>17 MR. SABA: We are on Exhibit 4.</p> <p>18 BY MR. SABA:</p> <p>19 Q. And if you can show me what Mr. Cioffi is</p> <p>20 referencing about the poor communication skills in the</p> <p>21 talent deck, that would be helpful.</p> <p>22 MR. CIOFFI: You asked this question already.</p> <p>23 MR. SABA: Well, no, apparently --</p> <p>24 MR. CIOFFI: You asked it and she answered it.</p> <p>25 The record speaks for itself, but what page are you</p>
<p>Page 165</p> <p>1 Q. Well, you said before he reads all the time.</p> <p>2 That's --</p> <p>3 A. Yes, he does.</p> <p>4 Q. So did --</p> <p>5 A. When he did make presentations, he did read</p> <p>6 them to the board.</p> <p>7 Q. Was he reading during all the presentations</p> <p>8 between 2009 and 2016?</p> <p>9 MR. CIOFFI: Objection.</p> <p>10 THE WITNESS: As I said, I do not recall</p> <p>11 exactly how many times he presented, but in all the</p> <p>12 times he did present while I was on the board, he</p> <p>13 read his presentations.</p> <p>14 BY MR. SABA:</p> <p>15 Q. Every one?</p> <p>16 A. To the best of my knowledge.</p> <p>17 Q. And was this ever communicated as a deficit to</p> <p>18 Mr. McHugh?</p> <p>19 MR. CIOFFI: Objection. Asked and answered.</p> <p>20 BY MR. SABA:</p> <p>21 Q. And the answer is no, right?</p> <p>22 MR. CIOFFI: The answer -- no, that wasn't her</p> <p>23 answer. She pointed out to you in the talent deck</p> <p>24 what the criticism was, but anyway.</p> <p>25 BY MR. SABA:</p>	<p>Page 167</p> <p>1 directing her to?</p> <p>2 MR. SABA: Fifth Third McHugh 001132.</p> <p>3 THE WITNESS: Oh, I'm reading the wrong</p> <p>4 person. Sorry. So could you repeat the question?</p> <p>5 MR. SABA: Certainly.</p> <p>6 BY MR. SABA:</p> <p>7 Q. Mr. Cioffi represented that you pointed out in</p> <p>8 the talent deck where it was indicated that Mr. McHugh</p> <p>9 would read his reports or otherwise had difficulty</p> <p>10 communicating.</p> <p>11 MR. CIOFFI: Objection. That's not what I</p> <p>12 pointed out. You asked her this question three</p> <p>13 hours ago.</p> <p>14 THE WITNESS: I'm sorry. Could you repeat the</p> <p>15 question again?</p> <p>16 MR. SABA: Certainly.</p> <p>17 BY MR. SABA:</p> <p>18 Q. Does the talent deck for Mr. McHugh, marked as</p> <p>19 Fifth Third McHugh 001132, in any way indicate that he</p> <p>20 has a deficit with respect to communication skills or</p> <p>21 that he was reading his reports to the board?</p> <p>22 A. It does not say he was reading his reports to</p> <p>23 the board. It doesn't say that in here, though he was,</p> <p>24 it doesn't specifically say that. And that was</p> <p>25 communicated to -- to -- as I believe I said, which is</p>

<p>Page 168</p> <p>1 correct, a number of executives were doing that. Tim 2 Spence was not doing that, but a number of executives 3 were doing that, and we asked specifically that they 4 discontinue that. I -- so I don't know that I see 5 that in see here, but I can tell you that that was an 6 issue, certainly an issue.</p> <p>7 Q. And who did you ask that they not do that?</p> <p>8 A. I don't recall exactly, but there were a 9 number of executives who needed to be coached on their 10 presentation skills.</p> <p>11 Q. Going back to the interactions that you 12 mentioned with Mr. McHugh, going back ten-plus years, do 13 you know if Mr. McHugh attended any board meetings 14 between 2009 and 2016?</p> <p>15 A. I don't recall. I believe that he did, but I 16 don't recall specifically. And if he -- I just don't 17 recall. I believe he did.</p> <p>18 Q. How many do you believe he attended during 19 that time period?</p> <p>20 A. I don't recall.</p> <p>21 Q. The fact of the matter is, you have no idea 22 how many interactions you had with Mr. McHugh over the 23 last ten years, much less five years, correct?</p> <p>24 MR. CIOFFI: Objection. Argumentative.</p> <p>25 THE WITNESS: I had a number of -- quite a</p>	<p>Page 170</p> <p>1 A. I do not.</p> <p>2 Q. -- marked as Exhibit 13?</p> <p>3 A. I do not know. I do see that it calls out his 4 strength as a strong communicator with charisma, a great 5 leader, very innovative, bright and insightful. He's a 6 great thinker and problem solver. Has had a great 7 impact from a strategy perspective. I do see that.</p> <p>8 Q. But you don't know who participated in the 9 wording of that, correct?</p> <p>10 A. Again, it was prepared by RHR, so I am 11 assuming this is an RHR document.</p> <p>12 Q. But you don't know?</p> <p>13 A. I don't know for a fact, but I have no reason 14 to think it isn't.</p> <p>15 Q. You mentioned during the time that Mr. Cioffi 16 was questioning you that Mr. Spence did a number of 17 acquisitions while at Oliver Wyman; is that correct?</p> <p>18 MR. CIOFFI: Objection. She didn't say that.</p> <p>19 THE WITNESS: I did not say that.</p> <p>20 MR. CIOFFI: The record speaks for itself.</p> <p>21 THE WITNESS: He did not do acquisitions. He 22 helped banks plan for and work on acquisitions, but 23 he would not have executed those acquisitions 24 himself. They would have been executed by the 25 bank, although my understanding is he worked on due</p>
<p>Page 169</p> <p>1 number of interactions with Mr. McHugh. I believe 2 it was fairly extensive. The -- and as I said, the 3 interactions were such that I -- I and many of the 4 other board members came away -- all of the other 5 board members came away with the impression that he 6 would not be an appropriate next CEO for Fifth 7 Third because Phil -- Tim Spence had significantly 8 stronger skills in many, many areas, not simply 9 communication, but in many areas.</p> <p>10 BY MR. SABA:</p> <p>11 Q. Referring you back to Exhibit Number 13, the 12 board summary regarding Tim Spence; do you see that?</p> <p>13 A. So I'm still looking for it. 13. Thank you. 14 Yes, I have it.</p> <p>15 Q. Do you know who from Fifth Third participated 16 in the wording of the board's summary regarding Tim 17 Spence?</p> <p>18 MR. CIOFFI: Objection. Assumes facts not in 19 evidence, and it is argumentative.</p> <p>20 THE WITNESS: This was prepared by --</p> <p>21 MR. CIOFFI: There's no foundation. Go ahead.</p> <p>22 THE WITNESS: This was prepared by RHR.</p> <p>23 BY MR. SABA:</p> <p>24 Q. Do you know if anyone from Fifth Third 25 participated in the wording of the board summary --</p>	<p>Page 171</p> <p>1 diligence and he worked on helping banks do 2 acquisitions.</p> <p>3 BY MR. SABA:</p> <p>4 Q. Do you know how many acquisitions he helped 5 banks with?</p> <p>6 A. I do not.</p> <p>7 Q. Do you know which banks he helped?</p> <p>8 A. I do not.</p> <p>9 Q. You talked about the MB acquisition and what a 10 big success that was. Do you know how many customers 11 and employees were lost as a result of the integration?</p> <p>12 A. I do not.</p> <p>13 Q. Do you know what the program was called 14 Transforming Fifth Third?</p> <p>15 A. Yes.</p> <p>16 Q. What was Transforming Fifth Third?</p> <p>17 A. It was a -- kind of a reengineering of some of 18 the processes and a desire to put Fifth Third on a 19 stronger target for the future, trying to build a better 20 base for the future. It's been a long time so I don't 21 recall all of the details but I definitely recall the 22 program.</p> <p>23 Q. Do you know who led that program?</p> <p>24 A. I do not recall.</p> <p>25 Q. Do you know if the purpose of it was to</p>

<p>1 upgrade the CAMEL rating for Fifth Third?</p> <p>2 A. I think the purpose was to do a variety of</p> <p>3 things, certainly to improve processes and make them</p> <p>4 more streamlined and efficient, and certainly that would</p> <p>5 have benefited our CAMEL ratings.</p> <p>6 Q. Did you understand that it was successful in</p> <p>7 upgrading Fifth Third's CAMEL ratings?</p> <p>8 A. I don't know -- our CAMEL ratings did</p> <p>9 increase, but increased over a period of time. I don't</p> <p>10 recall that -- I don't recall what the increase was</p> <p>11 simply as a result of TFT, Transforming Fifth Third.</p> <p>12 Q. And do you know if that was led by Phil</p> <p>13 McHugh?</p> <p>14 A. I do not know. There were a wide variety of</p> <p>15 work streams in that program and a wide variety of</p> <p>16 people involved in it. I do recall that.</p> <p>17 Q. But you don't know if it was led by Phil</p> <p>18 McHugh or not?</p> <p>19 A. I do not recall.</p> <p>20 Q. With respect to the MB acquisition, has Fifth</p> <p>21 Third's market share increased in the Chicago area as</p> <p>22 measured by the FDIC?</p> <p>23 A. I don't know the FDIC rankings of the Chicago</p> <p>24 market.</p> <p>25 Q. So you don't know if it's increased or</p>	<p>Page 172</p> <p>1 A. I do see that.</p> <p>2 Q. Is that information, both on 001132 with</p> <p>3 respect to Phil McHugh and 001135, was that view of</p> <p>4 Mr. McHugh's talent as being moderate and Mr. Spence's</p> <p>5 as being high of you that was shared by board?</p> <p>6 A. Yes. The board unanimously agreed with those</p> <p>7 views.</p> <p>8 Q. Does the fact that this particular document</p> <p>9 says Mr. McHugh's talent is moderate reflect his</p> <p>10 deficiencies in communication skills?</p> <p>11 MR. SABA: Objection.</p> <p>12 THE WITNESS: Yes, it does.</p> <p>13 BY MR. CIOFFI:</p> <p>14 Q. And does it also reflect deficiencies in his</p> <p>15 experience and knowledge in the banking industry?</p> <p>16 MR. SABA: Objection.</p> <p>17 THE WITNESS: Yes, it does.</p> <p>18 BY MR. CIOFFI:</p> <p>19 Q. Similarly, does the rating of high talent</p> <p>20 potential for Mr. Spence reflect his high communication</p> <p>21 skills?</p> <p>22 MR. SABA: Objection.</p> <p>23 THE WITNESS: Yes, it does.</p> <p>24 BY MR. CIOFFI:</p> <p>25 Q. Does it also respect -- does it also reflect</p>
<p>Page 173</p> <p>1 decreased, correct?</p> <p>2 A. Correct.</p> <p>3 MR. SABA: We'll go off the record one second.</p> <p>4 THE VIDEOGRAPHER: The time is 4:04 p.m.</p> <p>5 We're going off the record.</p> <p>6 (A recess was taken from 4:04 p.m. to</p> <p>7 4:05 p.m.)</p> <p>8 THE VIDEOGRAPHER: The time is 4:05 p.m.</p> <p>9 We're back on the record.</p> <p>10 MR. SABA: That's all the questions I have,</p> <p>11 again, subject to continuation in progress relative</p> <p>12 to the various pending discovery issues.</p> <p>13 MR. CIOFFI: I have the same reaction this</p> <p>14 time as I did last time you said that.</p> <p>15 FURTHER EXAMINATION</p> <p>16 BY MR. CIOFFI:</p> <p>17 Q. I want to direct your attention back to</p> <p>18 Exhibit Number 4. And if I could direct your attention</p> <p>19 to 001132, the Phil McHugh talent card. You see there</p> <p>20 it has talent information and then it has under that a</p> <p>21 block that says moderate potential; do you see that?</p> <p>22 A. I do see that.</p> <p>23 Q. And I want to direct your attention back to</p> <p>24 001135, the talent information under Tim Spence is high</p> <p>25 potential; do you see that?</p>	<p>Page 174</p>

1 his high knowledge and experience in the banking
2 industry?

3 MR. SABA: Objection.

4 THE WITNESS: Yes.

5 MR. CIOFFI: I have no further questions.

6 MR. SABA: Again, I have no questions. We'll
7 continue this in progress due to discovery issues
8 and issues raised before.

9 THE VIDEOGRAPHER: The time is 4:07. We are
10 going off the record.
11
12
13

14 _____
MARSHA CONRAD WILLIAMS

15 _____
DATE
16
17

18 - - -

19 DEPOSITION CONCLUDED AT 4:07 P.M.

20 - - -
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22
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24
25

C E R T I F I C A T E

STATE OF OHIO :
: SS
COUNTY OF HAMILTON :

I, Wendy L. Raymer, RPR, CRR, the undersigned,
a duly qualified and commissioned notary public within
and for the State of Ohio, do hereby certify that before
the giving of her aforesaid deposition, MARSHA CONRAD
WILLIAMS was by me first duly sworn to depose the truth,
the whole truth and nothing but the truth; that the
foregoing is the deposition given at said time and place
by MARSHA CONRAD WILLIAMS; that said deposition was
taken in all respects pursuant to stipulation of
counsel; that I am neither a relative of nor employee of
any of the parties or their counsel, and have no
interest whatever in the result of the action' that I am
not, not nor is the court reporting firm with which I am
affiliated, under a contract as defined in Civil Rule 28
(D).

IN WITNESS WHEREOF, I hereunto set my hand and
official seal of office at Cincinnati, Ohio, this 3rd
day of March, 2023.

My Commission expires
December 6, 2026

S/Wendy L. Raymer, RPR, CRR
Notary Public - State of Ohio

1 DEPOSITION ERRATA SHEET

2 Date Taken: February 16, 2023

3 Case Caption: PHILIP R. MCHUGH

4 vs. FIFTH THIRD BANCORP, et al.

5 DECLARATION UNDER PENALTY OF PERJURY

6 I declare under penalty of perjury
7 that I have read the entire transcript of
8 my deposition taken in the captioned matter
9 or the same has been read to me, and
10 the same is true and accurate, save and
11 except for changes and/or corrections, if
12 any, as indicated by me on the DEPOSITION
13 ERRATA SHEET hereof, with the understanding
14 that I offer these changes as if still under
15 oath.

16 Signed on the _____ day of

17 _____, 20____.

18 _____
19 MARSHA CONRAD WILLIAMS
20
21
22
23
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2 DEPOSITION ERRATA SHEET

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MARSHA CONRAD WILLIAMS

1 3 DEPOSITION ERRATA SHEET

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24 MARSHA CONRAD WILLIAMS

25

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